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FROM

Dr. Freeman Snow,
of Cambridge.

1 April, 1892.

MESSAGES

OF THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING THE

CONVENTION OF FEBRUARY 29, 1892, BETWEEN THE UNITED STATES AND HER BRITANNIC MAJESTY, SUBMITTING TO ARBITRATION THE QUESTIONS WHICH HAVE ARISEN BETWEEN THOSE GOVERNMENTS CONCERNING

THE JURISDICTIONAL RIGHTS OF THE UNITED STATES IN THE WATERS OF BERING SEA, ETC.;

AND ALSO TRANSMITTING

RECENT CORRESPONDENCE UPON THAT SUBJECT WITH THE BRITISH GOVERNMENT.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1892.

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52D CONGRESS, 1st Session. } SENATE. { EX. DOC. No. 55.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A Convention signed at Washington, February 29, 1892, between the Governments of the United States and Her Britannic Majesty submitting to arbitration the questions which have arisen between those Governments concerning the jurisdictional rights of the United States in the waters of Bering Sea, etc.

MARCH 8, 1892.—Read; Convention read the first time and referred to the Committee on Foreign Relations, and, together with the message and accompanying papers, ordered to be printed in confidence for the use of the Senate.

MARCH 9, 1892.—Injunction of secrecy removed, and, with the accompanying correspondence, ordered to be printed.

To the Senate:

I herewith transmit, with a view to its ratification, a convention signed at Washington, the 29th of February, 1892, between the Governments of the United States and Her Britannic Majesty, submitting to arbitration the questions which have arisen between those Governments concerning the jurisdictional rights of the United States in the waters of the Bering Sea and concerning also the preservation of the fur seal in, and habitually resorting to, the said sea and the rights of the citizens and subjects of either country as regards the taking of fur seal in, or habitually resorting to, the said waters.

The correspondence not heretofore submitted to Congress in relation to the Bering Sea matter, is in course of preparation and will be transmitted without delay.

BENJ. HARRISON.

EXECUTIVE MANSION,
Washington, March 8, 1892.

The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, being desirous to provide for an amicable settlement of the questions which have arisen between their respective governments concerning the jurisdictional rights of the United States in the waters of Behring's Sea, and concerning also the preservation of the fur-seal in, or habitually resorting to, the

said Sea and the rights of the citizens and subjects of either country as regards the taking of fur-seal in, or habitually resorting to, the said waters, have resolved to submit to arbitration the questions involved, and to the end of concluding a convention for that purpose have appointed as their respective Plenipotentiaries:

The President of the United States of America, James G. Blaine, Secretary of State of the United States; and

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Sir Julian Pauncefote, G. C. M. G., K. C. B., Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States;

Who, after having communicated to each other their respective full powers which were found to be in due and proper form, have agreed to and concluded the following articles.

ARTICLE I.

The questions which have arisen between the Government of the United States and the Government of Her Britannic Majesty concerning the jurisdictional rights of the United States in the waters of Behring's Sea, and concerning also the preservation of the fur-seal in, or habitually resorting to, the said Sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in, or habitually resorting to, the said waters, shall be submitted to a tribunal of Arbitration, to be composed of seven Arbitrators, who shall be appointed in the following manner, that is to say: Two shall be named by the President of the United States; two shall be named by Her Britannic Majesty; His Excellency the President of the French Republic shall be jointly requested by the High Contracting Parties to name one; His Majesty the King of Italy shall be so requested to name one; and His Majesty the King of Sweden and Norway shall be so requested to name one. The seven Arbitrators to be so named shall be jurists of distinguished reputation in their respective countries.

In case of the death, absence or incapacity to serve of any or either of the said Arbitrators, or in the event of any or either of the said Arbitrators omitting or declining or ceasing to act as such, the President of the United States, or Her Britannic Majesty, or His Excellency the President of the French Republic, or His Majesty the King of Italy, or His Majesty the King of Sweden and Norway, as the case may be, shall name, or shall be requested to name forthwith another person to act as Arbitrator in the place and stead of the Arbitrator originally named by such head of a State.

And in the event of the refusal or omission for two months after receipt of the joint request from the High Contracting Parties of His Excellency the President of the French Republic, or His Majesty the King of Italy, or His Majesty the King of Sweden and Norway, to name an Arbitrator, either to fill the original appointment or to fill a vacancy as above provided, then in such case the appointment shall be made or the vacancy shall be filled in such manner as the High Contracting Parties shall agree.

ARTICLE II.

The Arbitrators shall meet at Paris within twenty days after the delivery of the counter case mentioned in Article IV, and shall proceed impartially and carefully to examine and decide the questions that have

been or shall be laid before them as herein provided on the part of the Governments of the United States and Her Britannic Majesty respectively. All questions considered by the tribunal, including the final decision, shall be determined by a majority of all the Arbitrators.

Each of the High Contracting Parties shall also name one person to attend the tribunal as its Agent to represent it generally in all matters connected with the arbitration.

ARTICLE III.

The printed case of each of the two parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the Agent of the other party as soon as may be after the appointment of the members of the tribunal, but within a period not exceeding three months from the date of the exchange of the ratifications of this treaty.

ARTICLE IV.

Within three months after the delivery on both sides of the printed case, either party may, in like manner deliver in duplicate to each of the said Arbitrators, and to the Agent of the other party, a counter case, and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence so presented by the other party.

If, however, in consequence of the distance of the place from which the evidence to be presented is to be procured, either party shall, within thirty days after the receipt by its agent of the case of the other party, give notice to the other party that it requires additional time for the delivery of such counter case, documents, correspondence and evidence, such additional time so indicated, but not exceeding sixty days beyond the three months in this Article provided, shall be allowed.

If in the case submitted to the Arbitrators either party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such party shall be bound, if the other party thinks proper to apply for it, to furnish that party with a copy thereof; and either party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance notice thereof within thirty days after delivery of the case; and the original or copy so requested shall be delivered as soon as may be and within a period not exceeding forty days after receipt of notice.

ARTICLE V.

It shall be the duty of the Agent of each party, within one month after the expiration of the time limited for the delivery of the counter case on both sides, to deliver in duplicate to each of the said Arbitrators and to the Agent of the other party a printed argument showing the points and referring to the evidence upon which his Government relies, and either party may also support the same before the Arbitrators by oral argument of counsel; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument, or oral argument by counsel, upon it; but in such case

the other party shall be entitled to reply either orally or in writing, as the case may be.

ARTICLE VI.

In deciding the matters submitted to the Arbitrators, it is agreed that the following five points shall be submitted to them, in order that their award shall embrace a distinct decision upon each of said five points, to wit:

1. What exclusive jurisdiction in the sea now known as the Behring's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

3. Was the body of water now known as the Behring's Sea included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring's Sea were held and exclusively exercised by Russia after said Treaty?

4. Did not all the rights of Russia as to jurisdiction, and as to the seal fisheries in Behring's Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty?

5. Has the United States any right, and if so, what right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary three-mile limit?

ARTICLE VII.

If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea, the Arbitrators shall then determine what concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such Regulations should extend, and to aid them in that determination the report of a Joint Commission to be appointed by the respective Governments shall be laid before them, with such other evidence as either Government may submit.

The High Contracting Parties furthermore agree to co-operate in securing the adhesion of other Powers to such Regulations.

ARTICLE VIII.

The High Contracting Parties having found themselves unable to agree upon a reference which shall include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented and urged by it; and, being solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions, do agree that either may submit to the Arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability of either Government upon the facts found to be the subject of further negotiation.

ARTICLE IX.

The High Contracting Parties having agreed to appoint two Commissioners on the part of each Government to make the joint investigation and report contemplated in the preceding Article VII, and to include the terms of the said Agreement in the present Convention, to the end that the joint and several reports and recommendations of said Commissioners may be in due form submitted to the Arbitrators should the contingency therefor arise, the said Agreement is accordingly herein included as follows:

Each Government shall appoint two Commissioners to investigate conjointly with the Commissioners of the other Government all the facts having relation to seal life in Behring's Sea, and the measures necessary for its proper protection and preservation.

The four Commissioners shall, so far as they may be able to agree, make a joint report to each of the two Governments, and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree.

These reports shall not be made public until they shall be submitted to the Arbitrators, or it shall appear that the contingency of their being used by the Arbitrators can not arise.

ARTICLE X.

Each Government shall pay the expenses of its members of the Joint Commission in the investigation referred to in the preceding Article.

ARTICLE XI.

The decision of the tribunal shall, if possible, be made within three months from the close of the argument on both sides.

It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

The decision shall be in duplicate, one copy whereof shall be delivered to the Agent of the United States for his Government, and the other copy shall be delivered to the Agent of Great Britain for his Government.

ARTICLE XII.

Each Government shall pay its own Agent and provide for the proper remuneration of the counsel employed by it and of the Arbitrators appointed by it, and for the expense of preparing and submitting its case to the tribunal. All other expenses connected with the Arbitration shall be defrayed by the two Governments in equal moieties.

ARTICLE XIII.

The Arbitrators shall keep an accurate record of their proceedings and may appoint and employ the necessary officers to assist them.

ARTICLE XIV.

The High Contracting Parties engage to consider the result of the proceedings of the tribunal of arbitration, as a full, perfect, and final settlement of all the questions referred to the Arbitrators.

ARTICLE XV.

The present treaty shall be duly ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty; and the ratifications shall be exchanged either at Washington or at London within six months from the date hereof, or earlier if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this treaty and have hereunto affixed our seals.

Done in duplicate at Washington the twenty-ninth day of February, one thousand eight hundred and ninety two.

JAMES G. BLAINE [SEAL]
JULIAN PAUNCEFOTE [SEAL]

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

Further correspondence with Great Britain respecting the fur-seal fisheries in the Bering Sea.

To the Senate:

I herewith transmit a copy of the correspondence, not heretofore printed, in relation to the Bering Sea negotiations terminating in the treaty between the United States and Great Britain which I submitted to the Senate on the 8th instant.

The previous correspondence in regard to this subject is contained in Senate Executive Document No. 106, Fiftieth Congress, second session; House Executive Document No. 450, Fifty-first Congress, first session, and House Executive Document No. 144, Fifty-first Congress, second session.

BENJ. HARRISON.

EXECUTIVE MANSION,
Washington, March 9, 1892.

LIST OF PAPERS.

From and to whom.	Date.	Subject.	Page
	1891.		
Lord Salisbury to Sir J. Pauncefote.	Feb. 21	Reply to Mr. Blaine's note of December 17. States that Great Britain took every step which it was in its power to take in order to make it clear to Russia that she did not accept claim to exclude her subjects for 100 miles distance from the coast which had been put forward in Ukase of 1821. Claims that words "Pacific Ocean," used in treaty of 1825 with Russia, did include Bering Sea. Proposes some changes to the questions to be submitted to arbitration.	17
Mr. Blaine to Sir J. Pauncefote..	Apr. 14	Gives six questions proposed for arbitration. The United States claims the same right to power beyond 3 miles limit as Great Britain; cites act of Parliament of 1889 attempting to control body of water on coast of Scotland 2,700 square miles in extent. Map of that body inclosed.	24
Sir J. Pauncefote to Mr. Blaine ..	Apr. 20	The stoppage of all sealing at sea and on land seems to be acceptable to Lord Salisbury, who wishes to know whether it would be preferred that the proposal come from the British Government.	27
Mr. Blaine to Sir J. Pauncefote...	May 4	Reviews the negotiations for a *modus vivendi* pending the result of arbitration; concessions made by the President in consequence thereof; recital of the obligations imposed on the North American Co., in return for the sealing privilege, which make it necessary that they should be allowed to take a limited number of seals contrary to the claim of Great Britain that sealing should be absolutely prohibited on both sides; submits terms of agreement on that basis.	28
Sir J. Pauncefote to Mr. Blaine...	May 5	Acknowledges the above, of which copy has been mailed, and precise terms telegraphed to London. Deprecates alleged delay; refers to previous interviews; mentions the exception taken at the two conditions that the right to kill a certain number of seals was reserved for the American Co. and that the *modus vivendi* was not to be put in force until arbitration was agreed upon, and expresses satisfaction that the latter condition has been removed.	31
Mr. Adee to Sir J. Pauncefote ...	May 20	Requests a reply to proposition of the 4th..... ..	32
Sir J. Pauncefote to Mr. Adee ..	May 21	Reply requested has not yet been received, but is expected to arrive in the course of a day.	32
Mr. Adee to Sir J. Pauncefote ...	May 26	Points to the reasons for which a prompt reply is desired; revenue cutters have been ordered to proceed to the fisheries, and the orders would be made definite by the conclusion of an agreement.	32
Sir J. Pauncefote to Mr. Adee ..	May 27	Regrets the delay and makes excuse on the ground of the lateness of the proposal.	33
Sir J. Pauncefote	June 3	Proposal for *modus vivendi* by the British Government.	34
Do	...do ...	Assents to the first five questions submitted by Mr. Blaine on April 14; makes a counter proposition in respect of question sixth, and of compensation for damages sustained.	34
Mr. Wharton to Sir J. Pauncefote	June 4	Proposes substitutes for subdivisions 1 and 2 of the British proposal for *modus vivendi* of June 3; takes exception to subdivision 3 relative to the appointment of consuls, and objects decidedly to the condition 4 of the previous assent of Russia; suggests that the navies of both nations enforce the agreement when it is concluded; reply to proposal of June 3.	34

LIST OF PAPERS—Continued.

From and to whom.	Date.	Subject.	Page.
	1891.		
Sir J. Pauncefote to Mr. Wharton	June 6	Submits the telegraphic reply to the above note accepting the proposals therein on condition that the British Government be allowed to supervise the execution of the agreement on the islands, and that the prohibition will be extended to the whole of the Bering Sea. Insists that the terms of arbitration and *modus* be agreed on simultaneously, as the suspension of sealing could not be acceded to another year.	37
Mr. Wharton to Sir J. Pauncefote	June 6	Reply to the above. Objects to the claim of supervision by British authorities of the killing on land which is already supervised by American officials whose integrity is to be upheld, but agrees to the appointment of one or two commissioners for the collection of facts to be placed before the arbitrators. Submits proposal embodying this and other conditions agreed upon.	37
Sir J. Pauncefote to Mr. Wharton	June 8	Submits, in reply to the above, an agreement telegraphed from London and containing modifications of and additions to that submitted in said note.	39
Mr. Wharton to Sir J. Pauncefote.	June 9	Reply to the above. Protests against the presenting of new propositions at this time; proceeds to discuss them and submits a form of agreement drafted with slight modifications after that presented on June 6; insists upon the necessity of a speedy settlement.	40
Sir J. Pauncefote to Mr. Wharton.	June 10	Presents a defense of the motives of Lord Salisbury in introducing new propositions at this time, but says they will probably not be insisted upon except that for a joint commission of four experts to report on the necessity for international arrangements.	43
Same to same	June 11	Reply has been received by telegraph from Lord Salisbury who regrets that the suggestions in regard to Russia have been rejected, but will authorize him to sign agreement if assurance is given respecting the commission of experts	44
Mr. Wharton to Sir J. Pauncefote.	June 11	Acknowledges the above and accepts, pending a fuller reply, the terms therein presented.	44
Sir J. Pauncefote to Mr. Wharton.	June 13	He has received telegraphic permission to sign agreement under previously understood condition as to joint commission.	44
Mr. Wharton to Sir J. Pauncefote.	June 13	Appointment for the formal attestation to the *modus vivendi*.	45
The President	June 15	Proclamation *in re modus vivendi*	45
Mr. Wharton to Sir J. Pauncefote	June 20	Instructions issued by the Navy Department in pursuance of the above proclamation. Sir J. Pauncefote is furnished copies thereof and asked for instructions issued by the British Government.	46
Sir J. Pauncefote to Mr. Wharton.	June 21	Appointment of British commissioners under the agreement announced to visit Pribyloff Islands.	48
Sir J. Pauncefote (memorandum)	June 23	Instructions issued to British naval senior officer stated. Suggestion of indemnity for any act in execution of the *modus vivendi* submitted.	49
Mr. Wharton to Sir J. Pauncefote.	June 25	Objections of British Government to arbitration proposition No. 6, presented by Mr. Blaine on Dec. 17, 1890. Reply to Lord Salisbury's note of the 26th of February, 1891, and of Sir J. Pauncefote's of June 3. The objection of the reference of the question of closed time to arbitration in such words as to attribute abnormal rights to the United States is met by a new proposition avoiding that objection; submits also a final clause in the matter of indemnification by which the interests of the United States as owner of the seal fisheries are not ignored as in the suggestion made in the note of June 3. Agreement in regard to the appointment of commissioners to visit the Pribyloff Islands proposed.	49
Same to same	June 26	Instructions for the reception of the British commissioners at the fisheries transmitted.	51
Same to same	June 26	Instructions issued to British navy, as per note of the 24th, have been comm unicated to the Navy Department.	51
Sir J. Pauncefote to Mr. Wharton	June 27	Note of the 25th acknowledged	52
Mr. Wharton to Sir J. Pauncefote.	July 3	Commissioners to visit the Bering Sea. Proposes they go and act together.	52

LIST OF PAPERS—Continued.

From and to whom.	Date.	Subject.	Page.
	1891.		
Sir J. Pauncefote to Mr. Wharton.	July 6	Reply to the above. Passage for the British Commissioners has already been arranged for but they will be instructed to coöperate as much as possible.	52
Same to same	July 6	Act of Parliament and order in council in pursuance of *modus vivendi* agreement inclosed.	53
Same to same	July 7	Instructions (in full) to the naval forces of Great Britain in the Bering Sea inclosed.	59
Mr. Adee to Sir J. Pauncefote	July 8	Note of 6th instant, inclosing act of Parliament and order in council, acknowledged.	59
Mr. Wharton to Sir J. Pauncefote.	July 9	Note of 7th and inclosure acknowledged.	60
Sir J. Pauncefote to Mr. Wharton.	July 13	The proposition in regard to indemnification made in the note of June 25 appears to Lord Salisbury to prejudge the question of liability. A form is submitted by which not only the facts but the liability arising from them shall be passed upon by the arbitrators.	60
Mr. Wharton to Sir J. Pauncefote.	July 23	The objection presented in the above note was not anticipated. It is contended that it was made with due regard to Lord Salisbury's own language and in a spirit of entire equality presents observations in support of that position; but, with a view to removing the last point of difference, the proposition is modified so as to meet the objection made against it.	61
Sir J. Pauncefote to Mr. Wharton	Aug. 8	Indemnities for acts committed by cruisers of either nation. Solicits a reply to the question relating thereto included in the memorandum transmitted with his note of June 23.	62
Mr. Wharton to Sir J. Pauncefote	Aug. 17	Reply to the above. The President thinks it will be time to consider the question of indemnity when occasion has been given to claim the same.	63
Same to same	Aug. 22	Requests a reply to his note of July 23	63
Sir J. Pauncefote to Mr. Wharton	Aug. 24	Regrets his inability to furnish as yet the reply above requested.	64
Same to same [telegram]	Aug. 26	Your note of 22d. Important letter posted to-day.	64
Same to same [unofficial]	Aug. 26	The British Government can not accept proposed form in note of July 23, because implying the admission of the doctrine that governments are liable for acts of their nationals. Without leaving the question of damages entirely out, as suggested by Mr. Wharton at one time, a middle course might be adopted, and, omitting the question of liability, questions of fact might be referred to the arbitrators. Submits the wording of the clause drafted on that basis.	64
Sir J. Pauncefote to Mr. Blaine	Aug. 26	The killing of seals is permitted, according to reports received from the Bering Sea Commissioners, to continue, although the number agreed upon, 7,500, is already exceeded, the excuse being that the limitation begins with the signature of the *modus vivendi* agreement. This Government is convinced the President will not countenance any such evasion of the spirit of said agreement.	65
Mr. Wharton to Sir J. Pauncefote	Sept. 2	Note of August 26 (above) shall receive immediate attention.	66
Same to same	Sept. 7	The objection presented in (unofficial) note of August 26 is groundless. The President does not assume liability on the part of Great Britain, but, on the contrary, wishes to put the question of liability to the arbitrators. He can not accept the counter proposition to submit the question of facts only, as those are well known, and must insist that the question of liability shall go to arbitration.	66
Same to same	Oct. 10	Alleged killing of seals in excess of number provided for by agreement. A reply to the note of August 26 has been delayed by the necessity of waiting for the United States agent's report. The agent's interpretation that the limitation should begin with the signing of the agreement was concurred in by the United States naval officers and the commissioners of both parties; a large number had been killed between that date and that of the receipt of instructions by the agent, leaving then but 3,029 to be taken "for the subsistence and care of the natives" from July 2, 1891, to May 1, 1892, and the agent seeing that it would be inadequate, called upon the lessees to supply the deficiency with salt meat.	67

LIST OF PAPERS –Continued.

From and to whom.	Date.	Subject.	Page.
	1891.		
Mr. Wharton to Sir J. Pauncefote.	Oct. 12	Delay of ten weeks in replying to the proposal of July 23, for the settlement of claims for damages is called to Sir Pauncefote's attention, together with the fact that the *modus vivendi* expires May 2, 1892. The President feels that if any effective action is to be taken in the matter before the next fishing season opens all the terms of agreement of arbitration should be disposed of immediately.	69
Sir J. Pauncefote to Mr. Wharton	Oct. 13	Reply to the above. Lord Salisbury is expected in London this week; much of the period of ten weeks was taken up in informal discussions.	69
Same to same	Oct. 17	The British Government insists upon its interpretation of the damage clause as presented in his note of August 26. The same proposition is practically renewed.	70
Mr. Wharton to Sir J. Pauncefote	Oct. 22	Regrets the determination reported in the above note and discusses it at some length, but with a view to induce a prompt solution submits a wording of the clause in conformity to the wish that questions of fact only shall be submitted to arbitration, the question of liability being reserved for future negotiations.	71
Sir J. Pauncefote to Mr. Wharton	Oct. 23	Acceptance of the above proposition has been received by telegraph.	72
Sir J. Pauncefote to Mr. Blaine...	Nov. 23	States that two reservations are desired in article 6, viz, that the necessity and nature of any regulations are left to the arbitrators, and that such regulations will not become obligatory upon the United States and Great Britain until they have received the assent of the maritime powers.	73
Mr. Blaine to Sir J. Pauncefote...	Nov. 27	States that within a few days the minister had furnished the exact points that had been agreed upon for arbitration; that he now informs him by his note of the 23d instant that two reservations are desired in the sixth article; that all regulations should be left to the arbitrators, and that they shall be accepted by the other maritime powers before becoming obligatory upon the United States and Great Britain. Such a proposition will postpone the matter indefinitely, and it can not be taken into consideration. There is no objection to submitting it to the maritime powers for their assent, but the United States can not agree to make the adjustment with Great Britain dependent upon the action of third parties, who have no direct interest in the seal fisheries.	74
Sir J. Pauncefote to Mr. Blaine ..	Dec. 1	States that with regard to the first reservation proposed in his note of 23d ultimo, the statement made in Department note of the 27th ultimo assures the same and it may be put aside. The object of the second reservation was to prevent the fisheries from being put at the mercy of some third power. The regulation might be evaded by British and American sealers by simply hoisting the flag of a non-adhering power. Suggests that after the lapse of one year if either government complains that injury is being done to the fisheries it may give notice of a suspension of the regulations. Suggests also that if any dispute arises between the two nations the question in controversy shall be referred to an admiral of each, who may choose an umpire.	75
Mr. Blaine to Sir J. Pauncefote ..	Dec. 2	In reply to note of 1st instant, states that President is unable to see the apprehended danger of a third nation engaging in sealing; no other nation ever has. Russia will not dissent from the agreement because it will endanger her own sealing property. We may look to her to sanction and strengthen it. The two nations, however, should unite in a note to the principal powers advising them of what has been done and asking their approval. If the agreement is disturbed by a third nation Great Britain and United States can act conjointly. It is therefore hoped that arbitration may be allowed to proceed.	76

LIST OF PAPERS—Continued.

From and to whom.	Date.	Subject.	Page.
	1891.		
Sir J. Pauncefote to Mr. Blaine...	Dec. 8	States that his Government does not fear that the powers will reject the regulations, but that they will refuse to allow the arrest of their ships which may engage in sealing in violation of the regulations. It is probable that during the close season sealing will go on under other flags.	77
Mr. Blaine to Sir J. Pauncefote...	Dec. 10	States, in reply to note of 8th instant, that since the dispute began not a vessel of France or Germany has ever engaged in sealing; it would be unprofitable for them to sail 20,000 miles to do so. If we wait until they agree that their ships may be searched the last seal will have been taken. Russia is regarded as an ally and no American country will loan its flag. To stop now for outside nations is to indefinitely postpone the whole question. The President adheres to his ground, that we must have the arbitration as already signed.	77
Sir J. Pauncefote to Mr. Blaine	Dec. 11	States that, in view of the strong opinion of the President that the danger apprehended by Lord Salisbury is too remote to justify delay, the British Government will not press the point, explained in his note of the 8th instant, but it reserves the right of raising it when the question of framing the regulations comes before the arbitrators. It is understood that they may attach such conditions to them as they may "a priori" judge to be necessary and just to the two powers. States that he is authorized to sign the text of the seven articles and of the joint commission article. Will call at Department at any time appointed.	78
Mr. Blaine to Sir J. Pauncefote..	Dec. 14	In reply to note of 11th instant, states that President objects to Lord Salisbury's making any reservation at all, and can not yield to him the right to appeal to the arbitrators to decide any point not embraced in the articles; to claim this right is to entirely change the arbitration. The President claims the right to have the seven points arbitrated. The matters to be arbitrated must be distinctly understood before the arbitrators are chosen. Is prepared to sign the articles without any reservation whatever, and will be glad to have him call at the Department on the 16th, at 11 a. m.	78
Sir J. Pauncefote to Mr. Blaine ..	Dec. 15	Will transmit note of 14th instant to his Government. Pending further instructions, it is not in his power to proceed to the signature of the articles.	79
Same to same..	Dec. 17	States in reply to note of 14th instant that Lord Salisbury states that owing to the difficulties of telegraphic communication he has been misunderstood, and will defer discussion as to the course to be followed in case the regulations are evaded by a change of flag. States that no reservation was embodied in his note of the 11th instant, and agrees with the President that no point should be submitted to the arbitrators not embraced in the agreement. Is ready to sign the articles.	79
Same to same.....	Dec. 30	Declines to have the number of the arbitrators reduced from seven to five, but prefers that each country should be represented by two and the other three appointed by foreign governments	80
	1892.		
Same to same	Jan. 16	States that Messrs. Baden-Powell and Dawson will arrive on the 29th.	80
Same to same.....	Jan. 21	His government accepts that the arbitrators shall be chosen by France, Italy, and Sweden.	81
Same to same.....	Jan. 30	Asks whether Department is prepared to proceed at once to the preparation and signature of the formal arbitration convention and Joint Commission.	81
Mr. Blaine to Sir J. Pauncefote ..	Feb. 4	Inclosing arbitration convention and Joint Commission agreement and states that he is ready to proceed at once to the signature of the convention.	81

LIST OF PAPERS—Continued.

From and to whom.	Date.	Subject.	Page.
	1892.		
Mr. Blaine to Sir J. Pauncefote..	Feb. 4	States that commissioners have been appointed to investigate and report, conjointly with British commissioners, upon facts relative to preservation of seal life; will be ready to confer informally with British colleagues at their convenience.	82
Sir J. Pauncefote to Mr. Blaine...	Feb. 6	Note of February 4 acknowledged. States that Sir Badan-Powell and Prof. Dawson have been appointed commissioners in the matter of the preservation of seal life and trusts that arrangements will be made at once for the meeting of the commission on Monday, 8th instant.	82
Mr. Blaine to Sir J. Pauncefote ...	Feb. 6	Regrets that the British commissioners are men who have already publicly expressed an opinion as to the merits of the question, but hopes this will not prevent a fair and impartial investigation. Supposed that before this the arbitration convention would be signed and thus have enabled the commissioners to proceed officially to a discharge of their duties, but as it became necessary to await approval of the draft of the instrument has interposed no objection to preliminary conferences.	83
Sir J. Pauncefote to Mr. Blaine ...	Feb. 8	Deprecates the intimation that the British commissioners may be biased by previous public expressions of opinion; presents the defense of both of them; remarks that the same observation might be urged in the case of the American commissioners, and expresses satisfaction that the course adopted is in accord with that suggested by him in the note dated April 29, 1890.	83
Mr. Blaine to Sir J. Pauncefote ...	Feb. 9	The British commissioners wishing to postpone joint conferences until arbitration convention shall have been signed, the United States commissioners have been instructed to make known their readiness to proceed without further delay, the United States Government regarding the convention as substantially agreed upon.	85
Sir J. Pauncefote to Mr. Blaine...	Feb. 11	Acknowledges above; makes mention of two preliminary conferences, and says the British commissioners hope to arrange for the formal opening of their session.	85
Mr. Blaine to Sir J. Pauncefote ..	Feb. 12	Refusal to discuss *modus vivendi* by the British commissioners; the value of the work of the commission will be diminished thereby. What is the scope of the duties of the British commissioners?	86
Sir J. Pauncefote to Mr. Blaine...	Feb. 13	He is awaiting instructions of Lord Salisbury, to whom the draft of arbitration convention inclosed in the note of February 4 has been forwarded.	86
Same to same	Feb. 19	No opinion can be expressed by the British Government as to the *modus vivendi* question raised in the interview of the 2d instant, until they know what is proposed.	87
Mr. Blaine to Sir J. Pauncefote...	Feb. 24	Urges the necessity of a *modus vivendi*; the terms should be similar to those of last year, but better executed; asks that the contents of this note be transmitted by telegraph, every day of delay involving great trouble to both Governments.	87
Same to same	Feb. 26	Sealing schooners are reported by United States consul at Victoria to have cleared to the number of forty-six with six or seven more to go, as against thirty same date last year The need of an agreement will soon be over if it is not arrived at soon.	88
Same to same	Feb. 27	Fixes the 29th as the day on which to sign the treaty of arbitration.	88
Sir J. Pauncefote to Mr. Blaine ..	Feb. 29	Reply to the note of the 24th. Lord Salisbury does not admit that the delays have been greater on the part of Great Britain; the British commissioners have reported that there is no danger of a serious diminution of the seals, and therefore the necessity of a *modus vivendi* is not apparent. Still he would not object to the prohibition limited to a zone not more than 30 miles around the Pribyloff Islands, provided the catch on the islands be limited to 30,000. The simile of trees would be more appropriate if applied to grass, which, like the seals, will be reproduced next year if cut this year, pending the result of arbitration.	88

LISTS OF PAPERS—Continued.

From and to whom.	Date.	Subject.	Page.
	1892.		
Sir J. Pauncefote to Mr. Blaine ..	Mar. 7	Presents arguments in support of Lord Salisbury's refusal to accede to another *modus vivendi;* the first was agreed to (as per note of June 6, 1891) under stipulation that the measure could not be repeated; there is no apparent danger to the seal species; the zone proposed is more extensive than that mentioned by Mr. Blaine on March 16, 1891; the anticipation of conflicts, considered in the note of May 4, 1891, has been met by the provisions of the Bering Sea act of Parliament and order in council.	89
Mr. Wharton to Sir J. Pauncefote.	Mar. 8	The President regrets that Great Britain should decline to agree to an effective mode of protecting a property the title to which is being submitted to arbitration, a course demanded by common equity. The simile of grass cutting refuted. If Great Britain declines, as shown by quotations from previous correspondence, to assume responsibility for acts of her subjects she should restrain the same from committing such acts. The prohibition of seal killing was a matter of comity before arbitration was agreed upon; it is now a matter of obligation. The killing under the restrictions of last year was four times that made on land, it would become enormous in the absence of any restriction. The impracticability of a 30-mile zone, now proposed by Lord Salisbury, was pointed out by himself when the proposal came from this Government. The United States can not be expected to forego protecting its property while the arbitration is proceeding.	90

CORRESPONDENCE WITH THE LEGATION OF THE UNITED STATES AT LONDON.

No.	From and to whom.	Date.	Subject.	Page.
		1888.		
825	Mr. Phelps to Mr. Bayard ..	Sept. 12	Great Britain will not enter into any convention for the protection of the seal fisheries without the concurrence of Canada, which can not be expected. Recommends that strong measures be taken to prevent the wholesale slaughter of seals.	93
		1889.		
132	Mr. White to Mr. Blaine....	Dec. 4	Letter of Sir George Baden-Powell to the *London Times* with regard to the Bering Sea question, and a letter of Mr. Flower, commenting thereon, in the same paper, transmitted.	95
		1891.		
394	Mr. Lincoln to Mr. Blaine...	Jan. 24	Question in the House of Commons relating to the status of the Bering Sea fisheries question, and reply given by Sir J. Ferguson, transmitted.	97
470	Same to same.....	June 6	Debate on the seal-fishery bill in the House of Commons, transmitted. The bill was read in the House of Lords without debate.	98
472	Same to same.....	June 10	Debate in the House of Lords after passage of the bill.	99
		1892.		
592	Same to same.....	Jan. 6	Speech of Sir George Baden-Powell to his constituents relative to the Bering Sea question, on Jan. 5, 1892, transmitted.	101

CORRESPONDENCE.

Lord Salisbury to Sir Julian Pauncefote.

No. 34.] FOREIGN OFFICE, *February* 21, 1891.

SIR: The dispatch of Mr. Blaine, under date of the 17th December, has been carefully considered by Her Majesty's Government. The effect of the discussion which has been carried on between the two Governments has been materially to narrow the area of controversy. It is now quite clear that the advisers of the President do not claim Behring's Sea as a *mare clausum*, and indeed that they repudiate that contention in express terms. Nor do they rely, as a justification for the seizure of British ships in the open sea, upon the contention that the interests of the seal fisheries give to the United States Government any right for that purpose which, according to international law, it would not otherwise possess. Whatever importance they attach to the preservation of the fur-seal species—and they justly look on it as an object deserving the most serious solicitude—they do not conceive that it confers upon any maritime power rights over the open ocean which that power could not assert on other grounds.

The claim of the United States to prevent the exercise of the seal fishery by other nations in Behring Sea rests now exclusively upon the interest which by purchase they possess in a ukase issued by the Emperor Alexander I, in the year 1821, which prohibits foreign vessels from approaching within 100 Italian miles of the coasts and islands then belonging to Russia in Behring Sea. It is not, as I understand, contended that the Russian Government, at the time of the issue of this ukase, possessed any inherent right to enforce such a prohibition, or acquired by the act of issuing it any claims over the open sea beyond the territorial limit of 3 miles, which they would not otherwise have possessed. But it is said that this prohibition, worthless in itself, acquired validity and force against the British Government because that Government can be shown to have accepted its provisions. The ukase was a mere usurpation; but it is said that it was converted into a valid international law, as against the British Government, by the admission of that Government itself.

I am not concerned to dispute the contention that an invalid claim may, as against another Government, acquire a validity which in its inception it did not possess, if it is formally or effectively accepted by that Government. But the vital question for decision is whether any other Government, and especially whether the Government of Great Britain, has ever accepted the claim put forward in this ukase. Our contention is, that not only can it not be shown that the Government of Great Britain, at any time since 1821, has admitted the soundness of the pretension put forward by that ukase, but that it can be shown that it has categorically denied it on more than one occasion. On the

18th January, 1822, four months after the issue of the ukase, Lord Londonderry, then British foreign secretary, wrote in the following terms to Count Lieven, the Russian ambassador in London:

> Upon the subject of this ukase generally, and especially upon the two main principles of claim laid down therein, viz, an exclusive sovereignty alleged to belong to Russia over the territories therein described, as also the exclusive right of navigating and trading within the maritime limits therein set forth, His Britannic Majesty must be understood as hereby reserving all his rights, not being prepared to admit that the intercourse which is allowed on the face of this instrument to have hitherto subsisted on these coasts and in those seas can be deemed to be illicit; or that the ships of friendly powers, even supposing an unqualified sovereignty was proved to appertain to the Imperial Crown in these vast and very imperfectly occupied territories, could, by the acknowledged law of nations, be excluded from navigating within the distance of 100 Italian miles, as therein laid down, from the coast.

On the 17th October in the same year the Duke of Wellington, ambassador at Verona, addressed to Count Nesselrode a note containing the following words:

> Objecting, as we do, to this claim of exclusive sovereignty on the part of Russia, I might save myself the trouble of discussing the particular mode of its exercise as set forth in this ukase. But we object to the sovereignty proposed to be exercised under this ukase not less than we do to the claim of it. *We can not admit the right of any power possessing the sovereignty of a country to exclude the vessels of others from the seas on its coasts to the distance of* 100 *Italian miles.*

Again, on the 28th November, 1822, the Duke of Wellington addressed a note to Count Lieven containing the following words:

> The second ground on which we object to the ukase is that His Imperial Majesty thereby excludes from a certain considerable extent of the open sea vessels of other nations. We contend that the assumption of this power is contrary to the law of nations; and we can not found a negotiation upon a paper in which it is again broadly asserted. We contend that no power whatever can exclude another from the use of the open sea; a power can exclude itself from the navigation of a certain coast, sea, etc., by its own act or engagement, but it can not by right be excluded by another. This we consider as the law of nations; and we can not negotiate upon a paper in which a right is asserted inconsistent with this principle.

It is evident, therefore, that so far as diplomatic representation went, the King's Government of that date took every step which it was in their power to take in order to make it clear to the Russian Government that Great Britain did not accept the claim to exclude her subjects for 100 miles' distance from the coast, which had been put forward in the ukase of 1821.

Mr. Blaine does not deal with these protests, which appear to Her Majesty's Goverment to be in themselves amply sufficient to decide the question whether Great Britain did or did not acquiesce in the Russian claim put forward by the ukase. He confines himself mainly, in the dispatch under consideration, to the consideration of the treaties which were subsequently made between Great Britain and Russia and America and Russia in the year 1825, and especially of that between Russia and Great Britain. This treaty, of which the text is printed at the close of Mr. Blaine's dispatch, does not contain a word to signify the acquiescence of Great Britain in the claim recently put forward by Russia to control the waters of the sea for 100 miles from her coast. There is no stipulation upon which this interpretation can be imposed by any process of construction whatsoever. But there is a provision having in our judgment a totally opposite tendency, which indeed was intended to negative the extravagant claim that had recently been made on the part of Russia; and it is upon this provision that the main part of Mr. Blaine's argument, as I understand it, is founded. The stipu-

lation to which I refer is contained in the first article and runs as follows:

ARTICLE 1. It is agreed that the respective subjects of the high contracting parties shall not be troubled or molested in any part of the ocean commonly called the Pacific Ocean, either in navigating the same, in fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following articles.

I understand Mr. Blaine's argument to be that, if Great Britain had intended to protest against the claim of Russia to exclude ships for 100 miles from her coasts in Behring Sea, she would have taken this opportunity of doing so; but that, in confining herself to stipulations in favor of full liberty of navigation and fishing in any part of the ocean commonly called the Pacific Ocean, she, by implication, renounced any claim that could arise out of the same set of circumstances in regard to any sea that was not part of the Pacific Ocean. And then Mr. Blaine goes on to contend that the phrase "Pacific Ocean" did not and does not include Behring Sea.

Even if this latter contention were correct, I should earnestly demur to the conclusion that our inherent rights to free passage and free fishing over a vast extent of ocean could be effectively renounced by mere reticence or omission. The right is one of which we could not be deprived unless we consented to abandon it, and that consent could not be sufficiently inferred from our negotiators having omitted to mention the subject upon one particular occasion.

But I am not prepared to admit the justice of Mr. Blaine's contention that the words "Pacific Ocean" did not include Behring Sea. I believe that in common parlance, then and now, Behring Sea was and is part of the Pacific Ocean; and that the latter words were used in order to give the fullest and widest scope possible to the claim which the British negotiators were solemnly recording of a right freely to navigate and fish in every part of it, and throughout its entire extent. In proof of the argument that the words "Pacific Ocean" do not include Behring Sea, Mr. Blaine adduces a long list of maps in which a designation distinct from that of "Pacific Ocean" is given Behring Sea; either "Behring Sea," or "Sea of Kamschatka," or the "Sea of Anadir." The argument will hardly have any force unless it is applicable with equal truth to all the other oceans of the world. But no one will dispute that the Bay of Biscay forms part of the Atlantic Ocean, or that the Gulf of Lyons forms part of the Mediterranean Sea; and yet in most maps it will be found that to those portions of the larger sea a separate designation has been given. The question whether by the words "Pacific Ocean" the negotiators meant to include or to exclude Behring Sea depends upon which location was esteemed to be the correct usage at the time. The date is not a distant one, and there is no ground for suggesting that the usage has changed since the Anglo-Russian treaty of 1825 was signed. The determination of this point will be most satisfactorily ascertained by consulting the ordinary books of reference. I append to this dispatch a list of some thirty works of this class, of various dates from 1795 downwards, and printed in various countries, which combine to show that, in customary parlance, the words "Pacific Ocean" do include Behring Sea.

If, then, in ordinary language, the Pacific Ocean is used as a phrase including the whole sea from Behring Straits to the Antarctic Circle, it follows that the 1st article of the treaty of 1825 did secure to Great Britain in the fullest manner the freedom of navigation and fishing in Behring Sea. In that case no inference, however indirect or circuitous,

can be drawn from any omission in the language of that instrument to show that Great Britain acquiesced in the usurpation which the ukase of 1821 had attempted. The other documents which I have quoted sufficiently establish that she not only did not acquiesce in it, but repudiated it more than once in plain and unequivocal terms; and as the claim made by the ukase has no strength or validity except what it might derive from the assent of any power whom it might affect, it results that Russia has never acquired by the ukase any right to curtail the natural liberty of Her Majesty's subjects to navigate or fish in these seas anywhere outside territorial waters. And what Russia did not herself possess she was not able to transmit to the United States.

Her Majesty's Government have, in view of these considerations, no doubt whatever that British subjects enjoy the same rights in Behring Sea which belong to them in every other portion of the open ocean; but it is, nevertheless, a matter of sincere satisfaction that the President is willing to refer to arbitration what he conceives to be the matters which have been under discussion between the two Governments for the last four years. In regard to the questions as they are proposed by Mr. Blaine, I should say that as to the first and second, no objection will be offered by Her Majesty's Government. They are as follows:

(1) What exclusive jurisdiction in the sea now known as the Behring Sea and what exclusive exclusive rights in the seal fisheries therein did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

(2) How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

The third question is expressed in the following terms:

Was the body of water now known as the Behring Sea included in the phrase "Pacific Ocean" as used in the treaty of 1825 between Great Britain and Russia and what rights (if any) in the Bering Sea were given or conceded to Great Britain by the said treaty?

Her Majesty's Government would have no objection to referring to arbitration the first part of that question, if it should be thought desirable to do so; but they would give that consent with the reservation that they do not admit that the decision of it can conclude the larger questions which the arbitrator would have to determine. To the latter part of No. 3 it would be their duty to take exception:

What rights, if any, in the Behring Sea were given or conceded to GreatBritain by the said treaty?

Great Britain has never suggested that any rights were given to her or conceded to her by the said treaty. All that was done was to recognize her natural right of free navigation and fishing in that as in all other parts of the Pacific Ocean. Russia did not give those rights to Great Britain, because they were never hers to give away.

(4) Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea east of the water boundary in the treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that treaty?

This fourth question is hardly worth referring to an arbitrator, as Great Britain would be prepared to accept it without dispute.

The fifth proposed question runs as follows:

(5) What are now the rights of the United States as to the fur-seal fisheries in the waters of the Behring Sea outside of the ordinary territorial limits, whether such rights grow out of the cession by Russia of any special rights or jurisdiction held by her in such fisheries or in the waters of Behring Sea, or out of the ownership of the breeding islands, and the habits of the seals in resorting thither and rearing their young thereon, and going out from the islands for food, or out of any other fact or incident connected with the relation of those seal fisheries to the territorial possessions of the United States?

The first clause, "What are now the rights of the United States as to the fur-seal fisheries in the waters of the Behring Sea outside of the ordinary territorial limits?" is a question which would be very properly referred to the decision of an arbitrator. But the subsequent clause, which assumes that such rights could have grown out of the ownership of the breeding islands, and the habits of the seals in resorting thereto, involves an assumption as to the prescriptions of international law at the present time to which Her Majesty's Government are not prepared to accede. The sixth question, which deals with the issues that will arise in case the controversy should be decided in favor of Great Britain, would perhaps more fitly form the substance of a separate reference. Her Majesty's Government have no objection to refer the general question of a close time to arbitration, or to ascertain by that means how far the enactment of such a provision is necessary for the preservation of the seal species; but any such reference ought not to contain words appearing to attribute special and abnormal rights in the matter to the United States.

There is one omission in these questions which I have no doubt the Government of the President will be very glad to repair; and that is the reference to the arbitrator of the question, what damages are due to the persons who have been injured, in case it shall be determined by him that the action of the United States in seizing British vessels has been without warrant in international law. Subject to these reservations, Her Majesty's Government will have great satisfaction in joining with the Government of the United States in seeking by means of arbitration an adjustment of the international questions which have so long formed a matter of controversy between the two Governments.

I have to request that you will read this dispatch to Mr. Blaine, and leave a copy of it with him should he desire it.

I am, etc.,

SALISBURY.

APPENDIX.

Kamschatka Sea is a large branch of the Oriental or North Pacific Ocean. (Malham, John. "Naval Gazetteer," 1795.)

Beering's Straits, which is the passage from the North Pacific Ocean to the Arctic Sea.

Beering's Island. An island in the Pacific Ocean. [Behring's Island is in Behring's Sea.] (Brookes, R. "General Gazetteer," 1802.)

Kamschatka. Bounded east and south by Pacific.

Kamtschatka. Bounded on the north by the country of the Koriacs, on the east and south by the North Pacific Ocean, and on the west by the Sea of Okotsk. (Montefiore. "Commercial Dictionary," 1803.)

Beering's Island. In the North Pacific Ocean. ("Geographical Dictionary," London, 1804.)

Beering's Island. An island in the North Pacific Ocean. (Cruttwell, C. "New Universal Gazetteer," 1808.)

Kamtchatka. River, which runs into the North Pacific Ocean.

Kamtchatka. Peninsula, bounded on the east and south by the North Pacific Ocean.

Islands in the Eastern or Great Pacific Ocean: Behring's Isle. (Mangnall, R. Compendium of Geography," 1815.)

Stilles Meer. Vom 5 nördl. Br. an bis zur Beringsstrasse aufwärts stets heftige Stürme. [Behring's Strait is at the northern extremity of Behring's Sea.] (Galletti, J. G. A. "Geographisches Wörterbuch," Pesth, 1822.)

Behring's Island. An island in the North Pacific Ocean. ("Edinburg Gazetteer," edition 1822, vol. 1, p. 432.)

Beering's Island. In the North Pacific Ocean. ("General Gazetteer," London, 1823.)

Berhing's Island. In the Pacific. ("New London Universal Gazetteer," 1826.)

Mer Pacifique. Il s'étend du nord au sud depuis le Cercle Polaire Arctique, c'est-à-dire, depuis le Détroit de Behring, qui le fait communiquer à l'Océan Glacial Austral. (Dictionnaire Géographique, Universel, 1828.)

Stilles Meer. Vom 30 südlicher Breite bis zum 5 nördlicher Breite verdient er durch seine Heiterkeit und Stille den namen des Stillen Meers; von da an bis zus Beringsstrasse ist es heftigen Stürmen unterworfen. (Seitz, Dr. J. C. Geographischer-Statistisches Handwörterbuch, Halberstadt, 1829.)

Beering's Island. In the North Pacific Ocean. ("Penny National Library: Geography and Gazetteer," 1830.)

Behring's Strait connects the Frozen Ocean with the Pacific. (Arrowsmith. "Grammar of Modern Geography," 1832.)

The Anadir flows into the Pacific Ocean.

The principal gulfs of Asiatic Russia are: the Gulf of Anadir, near Behring's Strait; the Sea of Penjina, and the Gulf of Okhotsk, between Kamtchatka and the mainland of Russia—all three in the Pacific Ocean.

L'Océan Pacifique Boréal s'étend depuis le Détroit de Behring jusqu'au tropique de Cancer. ("Précis de la Géographie Universelle," par Malte-Brun, vol. 2, p. 181, edition 1835.)

Le Détroit de Behring. A commencer par ce détroit, le Grand Océan (ou Océan Pacifique) forme la limite orientale de l'Asie. (*Ibid.*, vol. VIII, p. 4.)

Behring (Détroit célèbre). Il joint l'Océan Glacial Arctique au Grand Océan. (Langlois. "Dictionnaire de Géographie." 1838.)

The Pacific Ocean. Its boundary-line is pretty well determined by the adjacent continents, which approach one another towards the north, and at Bering Strait, which separates them, are only about 36 miles apart. This strait may be considered as closing the Pacific on the north. ("Penny Cyclopædia." 1840.)

Behring (Détroit de) à l'extrémité nord-est de l'Asie, sépare ce Continent de l'Amérique et l'Océan Glacial Arctique de l'Océan Pacifique. ("Dictionnaire Universel d'Histoire et de Géographie," par M. N. Bouillet. Paris, 1842.)

Behring (Mer de), partie de l'Océan Pacifique.

Behring (Détroit de). Canal de l'océan * * * unissant les eaux de l'Océan Pacifique à celles de l'Océan Arctique. ("Dictionnaire Géographique et Statistique," par Adrien Guibert. Paris, 1850.)

Pacific Ocean. Between longitude 70° west and 110° east, that is for a space of over 180°—it covers the greater part of the earth's surface, from Berings Straits to the Polar Circle, that separates it from the Antarctic Ocean. ("The New American Cyclopædia," edited by George Ripley and Charles A. Dana. New York, 1851).

Behring (Détroit de). Canal du Grand Océan unissant les eaux de l'Océan Pacifique à celles de l'Océan Glacial Arctique. ("Grand Dictionnaire de Géographie Universelle," par M. Bescherelle Aîné. 4 vols. 1855.)

Behrings' Sea, sometimes called the Sea of Kamtchatka, is that portion of the North Pacific Ocean lying between the Aleutian Islands and Behrings' Strait. ("Imperial Gazetteer," 1855.)

Behring's Island. An island in the North Pacific Ocean. (Fullarton's "Gazetteer of the World," 1856.)

Behring's Strait, which connects the Pacific with the Arctic Ocean, is formed by the approach of the Continents of America and Asia. ("Cyclopædia of Geography," by Charles Knight, 1856.)

Pacific Ocean. Its extreme southern limit is the Antarctic Circle, from which it stretches northward through 132 degrees of latitude to Behrings' Strait, which separates it from the Arctic Ocean. (McCulloch's "Geographical Dictionary," edited by F. Martin, 1866.)

Behring (Détroit de). Canal ou bras de mer unissant les eaux de l'Océan Glacial Arctique à celles de l'Océan Pacifique. ("Grand Dictionnaire Universel," par M. Pierre Labousse. Paris, 1867.)

Behrings' Strait. The narrow sea between the northeast part of Asia and the northwest part of North America, connecting the North Pacific with the Arctic Ocean. (Encyclopædia Britannica." 1875.)

Bering (Détroit de.) Passage qui unit l'Océan Glacial Arctique au Grand Océan. (St. Martin. "Nouveau Dictionnaire de Géographie Universelle," Paris, 1879.)

Behring Sea, or Sea of Kamchatka, is that part of the North Pacific Ocean between the Aleutian Islands in latitude 55° north and Bering Strait in latitude 66° north, by which latter it communicates with the Arctic Ocean. (Lippincott's "Gazetteer of the World," Philadelphia, 1880).

Behring, or Bhering. A strait, sea, island, and bay, North Pacific Ocean. (Bryce and Johnston, "Cyclopædia of Geography." London and Glasgow, 1880.)

Bering's Meer. Der nordöstlichste Teil des Stillen Ocean's. (Brockhaus' "Conversations Lexicon." Leipzig, 1882.)

Beringsstrasse. Meerenge das nordöstlichste Eismeer mit dem Stillen Ocean verbindend. (Ritter's "Geographisch-Statistisch Lexicon." Leipzig, 1883.)

Behring's Sea. Northeast part of the Pacific between Asia and America. ("Pocket Encyclopædia." Sampson Low, 1888.)

Behring Strait connects the Pacific with the Arctic Ocean. (Chamber's "Encyclopædia." 1888.)

Behring Sea. A part of the Pacific Ocean, commonly known as the Sea of Kamchatka.

Behring's Strait, connecting the North Pacific with the Arctic Ocean. (Blackie's "Modern Cyclopædia." 1889 edition.)

Behring's Sea, sometimes called the sea of Kamchatka, is that portion of the North Pacific Ocean lying between the Aleutian Islands and Behring's Straits.

In support of his argument that the term "Pacific Ocean" was not understood at the time as including Behring Sea, Mr. Blaine has quoted a note which, it appears, was presented by the Russian minister at Washington after the ratification of the treaty of the 5th (17th) April, 1824, between the United States and Russia.

In this note Baron Tuyl stated that "the Aleutian Islands, the coasts of Siberia, and the Russian possessions in general on the northwest coast of America to 59° 30′ of north latitude were positively excepted from the liberty of hunting, fishing, and commerce stipulated in favor of United States' citizens for ten years." The rights alluded to could not be those contained in the first article of the treaty, which is unlimited in duration, but those of frequenting the interior seas, harbors, and creeks conferred by Article IV.

Baron Tuyl grounded this construction of the treaty on the argument that "the coasts of Siberia are washed by the Sea of Okhotsk, the Sea of Kamschatka, and the Icy Sea, and not by the South Sea mentioned in the first article of the convention," and that "the Aleutian Islands were also washed by the Sea of Kamschatka or Northern Ocean."

He added that "it was not the intention of Russia to impede the free navigation of the Pacific Ocean, and that she would be satisfied with causing to be recognized, as well understood and placed beyond all manner of doubt, the principle that beyond 59° 30′ no vessel could approach her coasts and islands, nor fish or hunt within the distance of two marine leagues."*

Mr. Adams, on being shown the draft of the note, stated to Baron Tuyl that, if it were presented, he should return an answer to the effect that "the construction of treaties depending here upon the judiciary tribunals, the executive Government, even if disposed to acquiesce in that of the Russian Government, as announced by him (Baron Tuyl), could not be [? make it] binding upon the courts or upon this nation." He went on to say that it would be much better not to present the note, as the United States merchants would not go to trouble the Russians on the coast of Siberia or north of the fifty-seventh degree of latitude, and it was wisest not to put such fancies into their heads.

The incident, therefore, shows nothing material to the present issue, except that the Russian minister attempted in a note, which has hitherto been kept secret, to argue that Behring Sea was not a part of the South Sea (a term which is not employed in the British treaty), and that Mr. Adams stated that, even if the United States Government were disposed to acquiesce in this view, they could not bind the nation or the courts to it.

On the other hand, the Regulations of 1881, under which the American schooners *Eliza* and *Henrietta* were seized by the Russian authorities, are headed—

"Notice of order relative to commerce on Russian Pacific coast;"

"Without a special permit or license from the governor-general of Eastern Siberia foreign vessels are not allowed to carry on trading, hunting, fishing, etc., on the Russian coasts or islands in the Okhotsk and Behring seas, or on the northeastern coast of Asia, or within their sea-boundary line."

(Memorandum in Mr. Lothrop's dispatch to Mr. Bayard of the 7th March, 1882. Ex. Doc. No. 106, Fiftieth Congress, second session, p. 271.)

M. de Giers, in his subsequent note of the 8th May, 1882, speaks of these regulations is "a notice published by our consul at Yokohama relative to fishing, hunting, and to trade in the Russian waters of the Pacific." (*Ibid.*, p. 262.)

Mr, Frelinghuysen also speaks of the matter as "touching the Pacific coast fisheries." (*Ibid.*, p. 258.)

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*It does not appear, however, that the proposed limit of two leagues was observed or enforced, for in 1868 the Russian minister for foreign affairs, explaining the treatment of the American sealer *Java* in the Sea of Okhotsk, writes:

"Considering that foreign sealers are forbidden by the laws in force to fish in the Russian gulfs and bays at a distance less than 3 miles from the shore." (Mr. Westmann to Mr. Clay, 31st July, 1868, Ex. Doc. No. 106, Fiftieth Congress, second session, p. 253.)

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, April 14, 1891.

SIR: The modifications which Lord Salisbury suggests in the questions for arbitration do not wholly meet the views of the President; but the President changes the text of the third and fifth in such manner, it is hoped, as will result in an agreement between the two governments. While Lord Salisbury suggests a different mode of procedure from that embodied in the sixth question, the President does not understand him actually to object to the question, and he therefore assumes that it is agreed to.

The six questions as now proposed by the President are as follows:

First. What exclusive jurisdiction in the sea now known as the Behring Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

Second. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Btitain?

Third. Was the body of water now known as the Behring Sea included in the phrase "Pacific Ocean," as used in the treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after said treaty?

Fourth. Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea, east of the water boundary described in the treaty between the United States and Russia of March 30, 1867, passed unpaired to the United States under that treaty?

Fifth. Has the United States any right, and, if so, what right of protection or property in the fur seals frequenting the islands of the United States in Behring Sea, when such seals are found outside the ordinary 3-mile limit?

Sixth. If the determination of the foregoing questions shall leave the subject in such position that the concurrence of Great Britain is necessary in prescribing regulations for the killing of the fur seal in any part of the waters of Behring Sea, then it shall be further determined: First, how far, if at all, outside the ordinary territorial limits it is necessary that the United States should exercise an exclusive jurisdiction, in order to protect the seal for the time living upon the islands of the United States and feeding therefrom? Second, whether a closed season (during which the killing of seals in the waters of Behring Sea outside the ordinary territorial limits shall be prohibited) is necessary to save the seal-fishing industry, so valuable and important to mankind, from deterioration or destruction? And, if so, third, what months or parts of months should be included in such season, and over what waters it should extend?

The President does not object to the additional question respecting alleged damages to English ships, proposed by Lord Salisbury, if one condition can be added, namely: that after the issues of the arbitration are joined, if the United States shall prevail, all the seals taken by Canadian vessels during the period shall be paid for at the ordinary price for which skins are sold. This seems to the President to be the complement of Lord Salisbury's proposition, and he doubts not that it will secure his lordship's assent.

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In the first paragraph of Lord Salisbury's dispatch of February 21 he makes the following declaration:

> It is now quite clear that the advisers of the President do not claim Behring Sea as *mare clausum*, and, indeed, that they repudiate that contention in express terms.

Lord Salisbury's expression is put in such form as to imply (whether he so intended I know not) that the United States had hitherto been resting its contention upon the fact that the Behring Sea was *mare clausum*. If that was his intention it would have been well for his lordship to specify wherein the United States ever made the assertion. The emphatic denial in my dispatch of December 17 last was intended to put an end to the iteration of the charge and to eliminate it from the current discussion.

Lord Salisbury complains that I did not deal with certain protests, written by Lord Londonderry and the Duke of Wellington in 1822, which he had before quoted. If he will recur to the twenty-sixth and twenty-seventh pages of my dispatch of December 17, he will observe that I specially dealt with these; that I maintained and, I think, proved from the text that there was not a single word in those protests referring to the Behring Sea, but that they referred, in the language of the Duke of Wellington of the 17th of October, 1822, only to the lands "extending along the shores of the Pacific Ocean from latitude 49° to latitude 60° north." In the first paragraph of Lord Londonderry's protest of January 18, 1822, addressed to Count Lieven, of Russia, he alluded to the matters in dispute as "*especially connected with the territorial rights of the Russian Crown on the northwest coast of America bordering on the Pacific Ocean, and the commerce and navigation of His Imperial Majesty's subjects in the seas adjacent thereto.*" From these and other pertinent facts it is evident that the protests of Lord Londonderry and the Duke of Wellington had nothing whatever to do with the points now in issue between the American and British Governments concerning the waters of the Behring Sea. They both referred, in different and substantially identical phrases, to the territory south of the Alaskan Peninsula bordering on the Pacific and geographically shut out from the Behring Sea. I regret that my arguments on a point which Lord Salisbury considers of great importance should have escaped his lordship's notice.

In Lord Salisbury's judgment the contention of the United States now rests wholly upon the ukase of 1821 by the Emperor Alexander I of Russia. The United States has at no time rested its argument solely on the ground mentioned, and this Government regrets that Lord Salisbury should have so misapprehended the American position as to limit its basis of right in Behring Sea to the ukase of 1821. The United States has, among other grounds, insisted, without recurring to any of its inherited and superior rights in Alaska, that this Government has as full authority for going beyond the 3-mile line in case of proved necessity as Great Britian possesses.

Two or three instances of the power which Great Britain exercises beyond the 3-mile line have already been quoted, but have failed, thus far, to secure comment or explanation from Lord Salisbury. Another case can be added which, perhaps, is still more to the point. In 1889, only two years ago, the British Parliament enacted a law, the effect of which is fully shown by a map inclosed herewith. Far outside the 3-mile line the Parliament of Great Britain has attempted to control a body of water situated beyond the northeastern section of Scotland, 2,700 square miles in extent, and to direct that certain methods of fishing shall not be used within that great body of water under

a prescribed penalty. It will be observed that the inhibition is not alone against British subjects, but against "any person." I here quote the pertinent section of the Parliamentary act in question:

7 (1) The fishing board may, by by-law or by-laws, direct that the methods of fishing known as beam trawling and otter trawling shall not be used within a line drawn from Duncansby Head, in Caithness, to Rattray Point, in Aberdeenshire, in any area or areas to be defined in such by-law, and may from time to time make, alter, and revoke by-laws for the purposes of this section, but no such by-law shall be of any validity until it has been confirmed by the secretary for Scotland.

(2) Any person who uses any such method of fishing in contravention of any such by-law shall be liable, on conviction under the summary jurisdiction (Scotland) acts, to a fine not exceeding £5 for the first offense, and not exceeding £20 for the second or any subsequent offense, and every net set, or attempted to be set, in contravention of any such by-law, may be seized and destroyed or otherwise disposed of as in the sixth section of this act mentioned.

If Great Britain may thus control an area of 2,700 square miles of ocean on the coast of Scotland why may not the United States prescribe a space around the Pribyloff Islands in which similar prohibitions may be enforced? The following would be the needed legislation for such a purpose by Congress, and it is but a paraphrase of the act of Parliament:

The Fur Seal Board may, by by-law or by-laws, direct that the methods of sealing known as spearing, or harpooning, or with firearms, shall not be used within a line drawn from the shores of the Pribyloff Islands, 60 miles in the Behring Sea, and said board may, from time to time, make, alter, and revoke by-laws for the purpose of this section; but no such by-law shall be of any validity until it has been confirmed by the Secretary of the Treasury.

Second. Any person who uses any such method of sealing in contravention of such by-laws shall be liable on conviction to a fine not exceeding $100 for the first offense and not exceeding $500 for the second or any subsequent offense, and every spear, harpoon, or firearm attempted to be used in contravention of any such by-law may be seized and destroyed or otherwise disposed of as said fur seal board may direct.

It must not escape observation that the area of water outside the 3-mile line on the coast of Scotland, whose control is assumed by Great Britain, is as large as would be found inside a line drawn from Cape Cod to Portland harbor, on the New England coast.

Lord Salisbury reasserts his contention that the words "Pacific Ocean" at the time of the treaty between Russia and Great Britain did include Behring Sea. Undoubtedly the Pacific Ocean includes Behring Sea in the same sense that the Atlantic Ocean includes the Gulf of Mexico, and yet it would be regarded as a very inaccurate statement to say that the Mississippi River flows into the Atlantic Ocean. I think Lord Salisbury fails to recognize the common distinction between the "Atlantic Ocean" and "the waters of the Atlantic." While the Mexican Gulf is not a part of the Atlantic Ocean, it would, I am sure, comport with general usage to say that it belonged to the waters of the Atlantic, and, while Behring Sea is not technically a part of the Pacific Ocean it undoubtedly belongs to the waters of the Pacific.

The English Channel would not ordinarily be understood as included in the term "Atlantic Ocean." One would not say that Dover or Calais is on the coast of the Atlantic Ocean, and yet clearly the English Channel belongs to the waters of the Atlantic. In point of fact, therefore, according to the usage of the world, there is no dispute of any consequence between the two governments on the geographical point under consideration. The historical point is the one at issue. The explanatory note from Russia, filed in the State Department of this country, specially referred to in Mr. John Quincy Adams's diary and quoted in my note of December 17, 1890, plainly draws a distinction between the Pacific Ocean on the one hand, and the "Sea of Okhotsk, the Sea of

Kamchatka and the Icy Sea" on the other; and so long as Russia drew that distinction it must apply to, and must absolutely decide, all the contentions between the two countries as far as the waters of the Behring Sea are concerned. To discuss this point further would, in the opinion of the President, contribute nothing of value to the general contention.

In the opinion of the President Lord Salisbury is wholly and strangely in error in making the following statement:

> Nor do they [the advisers of the President] rely, as a justification for the seizure of British ships in the open sea, upon the contention that the interests of the seal fisheries give to the United States Government any right for that purpose which, according to international law, it would not otherwise possess.

The Government of the United States has steadily held just the reverse of the position which Lord Salisbury has imputed to it. It holds that the ownership of the islands upon which the seals breed, that the habit of the seals in regularly resorting thither and rearing their young thereon, that their going out from the islands in search of food and regularly returning thereto, and all the facts and incidents of their relation to the island, give to the United States a property interest therein; that this property interest was claimed and exercised by Russia during the whole period of its sovereignty over the land and waters of Alaska; that England recognized this property interest so far as recognition is implied by abstaining from all interference with it during the whole period of Russia's ownership of Alaska, and during the first nineteen years of the sovereignty of the United States. It is yet to be determined whether the lawless intrusion of Canadian vessels in 1886 and subsequent years has changed the law and equity of the case theretofore prevailing.

I have the honor to be, with the highest consideration, sir, your most obedient servant,

JAMES G. BLAINE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, April 20, 1891.

DEAR MR. BLAINE: I informed Lord Salisbury, in a private letter, of your alternative suggestion for a *modus vivendi* pending the result of the Behring Sea arbitration, namely, to stop all sealing both at sea and on land. Lord Salisbury seems to approve of that alternative, and he asks me whether, in case Her Majesty's Government should accept it, you would prefer that the proposal should come from them. I thought you would like to know Lord Salisbury's view of your proposal as early as possible, and that must be my excuse for troubling you with this letter during your repose at Virginia Beach.

May I ask you to be so good as to let me know, as soon as you conveniently can do so, what answer you would wish me to return to Lord Salisbury's inquiry?

Hoping that you have already benefited by the change of air,

I remain, etc.,

JULIAN PAUNCEFOTE.

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, May 4, 1891.

SIR: During the month of March last, a few days after the adjournment of Congress, acting under the instructions of the President, I proposed to you that a *modus vivendi* be agreed upon touching the seal fisheries, pending the result of arbitration of the question at issue between the two Governments. The President's first proposal, which I submitted to you, was that no Canadian sealer should be allowed to come within a certain number of miles of the Pribyloff Islands.

It was, however, the conclusion of the President, after reading Lord Salisbury's dispatch of February 21, that this *modus vivendi* might possibly provoke conflict in the Bering Sea, and, to avoid that result, he instructed me to propose that sealing, both on land and sea, should be suspended by both nations during the progress of arbitration, or during the season of 1891. On both occasions it was a conversational exchange of views, the first in my office at the State Department, the second at my residence.

The President was so desirous of a prompt response from Lord Salisbury to his second proposition that I ventured to suggest that you request an answer by cable, if practicable. Especially was the President anxious to receive an answer (which he trusted would be favorable) before he set out on his tour to the Pacific States. He left Washington on the night of April 13 without having heard a word from your Government. It was then a full month after he had instructed me to open negotiations on the question, and the only probable inference was that Lord Salisbury would not agree to his proposal.

The silence of Lord Salisbury implied, as seemed not improbable, that he would not restrain the Canadian sealers from entering Behring Sea, and, as all intelligence from British Columbia showed that the sealers were getting ready to sail in large numbers, the President found that he could not with justice prevent the lessees from taking seals on the Pribyloff Islands. The President therefore instructed the Secretary of the Treasury, who has official charge of the subject, to issue to the lessees the privilege of killing on the Pribyloff Islands the coming season the maximum number of 60,000 seals, subject, however, to the absolute discretion and control of an agent appointed by the Secretary of the Treasury to limit the killing to as small a number as the condition of the herd might, in his opinion, demand.

On the 22d of April, eight days after the President had left Washington, you notified me, when I was absent from the capital, that Lord Salisbury was ready to agree that all sealing should be suspended pending the result of arbitration. On the 23d of April I telegraphed Lord Salisbury's proposition to the President. He replied, April 25, expressing great satisfaction with Lord Salisbury's message, but instructing me to inform you that "some seals must be killed by the natives for food;" that "the lessees are bound, under their lease from the Government, to feed and care for the natives, making it necessary to send a ship to the Pribyloff Islands each season at their expense;" and that, for this service—a very expensive one—the "lessees should find their compensation in taking a moderate number of seals under the lease." The President expressed his belief that this allowance would be readily agreed to by Lord Salisbury, because the necessity is absolute.

You will remember that when I communicated this proposition from

the President to you, on the evening of Monday, April 27, you did not agree with the President's suggestion. On the contrary, you expressed yourself as confident that Lord Salisbury would not accept it; that in your judgment, the killing of seals must be cut off absolutely on the land and in the water, and that it could not be stopped on either unless stopped on both.

The narrative of facts which I have now given (absolutely necessary for clearly understanding the position of this Government) brings me to a further statement, which I am directed by the President to submit. The President refuses to believe that Lord Salisbury can possibly maintain the position you have taken when his lordship is placed in full possession of the facts which I shall now submit to you, somewhat in detail.

When the privilege of killing seals on the islands of St. George and St. Paul, in Behring Sea, was leased to the North American Company for a certain sum per skin to be paid to the Government, other duties of an onerous, costly, and responsible character were imposed upon the company.

Under their lease the company is obliged "to furnish to the inhabitants of the islands of St. George and St. Paul, annually, such quantity or number of dried salmon, and such quantity of salt, and such number of salt barrels for preserving their necessary supply of meat as the Secretary of the Treasury shall from time to time determine."

The company is further obliged to "furnish to the inhabitants of these islands 80 tons of coal annually, and a sufficient number of comfortable dwellings in which said native inhabitants may reside, and shall keep such dwellings in proper repair.

The company is further obliged "to provide and keep in repair such suitable schoolhouses as may be necessary, and shall establish and maintain during eight months of each year proper schools for the education of the children on said islands, the same to be taught by competent teachers, who shall be paid by the company a fair compensation; all to the satisfaction of the Secretary of the Treasury."

The company is further obliged "to maintain a suitable house for religious worship, and will also provide a competent physician or physicians and necessary and proper medicine and medical supplies."

The company is still further obliged "to provide the necessaries of life for the widows and orphans, aged and infirm inhabitants of said islands, who are unable to provide for themselves.

And it is finally provided that "all the foregoing agreements shall be done and performed by the company free of all costs and charges to the said native inhabitants of said islands or to the United States."

And it is made still further the duty of the company "to employ the native inhabitants of said islands to perform such labor on the islands as they are fitted to perform, and to pay therefor a fair and just compensation, such as may be fixed by the Secretary of the Treasury." And, also, the company "agrees to contribute, as far as in its power, all reasonable efforts to secure the comfort, health, education, and promote the morals and civilization of said native inhabitants."

In short, then, the means of living, the facilities for education, the care of health, the religious teaching, the training of the young, and the comfort of the old, in a community of over 300 persons, are all imposed upon the company as its solemn duty by specific articles of the lease. I inclose you a copy of the census of 1890, giving every name of the 303 persons, old and young, male and female, who constitute the whole community of the Pribyloff Islands.

The duties thus imposed upon the company must be discharged annually with punctuality and exactness. The comfort, possibly the safety, of all these human beings, peculiarly helpless when left to themselves, is dependent upon the company under the lease, and the lessees are paid therefor by the Government in the seal skins which the company receives for the service. If the company shall, as you say Lord Salisbury requests, be deprived of all privilege of taking seals, they certainly could not be compelled to minister to the wants of these 300 inhabitants for an entire year. If these islanders are to be left to charity, the North American Company is under no greater obligation to extend it to them than are other citizens of the United States. It evidently requires a considerable sum of money to furnish all the supplies named in the lease—supplies which must be carried 4,000 miles on a specially chartered steamer. If the lessees are not to be allowed payment in any form for the amount necessary to support these 300 people on the islands, they will naturally decline to expend it. No appropriation of money has been made by Congress for the purpose, and the President can not leave these worthy and innocent people to the hazard of starvation, even to secure any form of agreement with Lord Salisbury touching seal life. Seal life may be valuable, but the first duty of the Government of the United States in this matter is to protect human life.

In this exigency the President instructs me to propose to Lord Salisbury that he concede to the North American Company the right to take a sufficient number of seals, and no more than sufficient, to recompense them for their outlay in taking care of the natives; and that, in the phrase of the President, all "commercial killing of seals be prohibited pending the result of arbitration." The Secretary of the Treasury has the right to fix the number necessary to the end desired. After full consideration, he has limited the number to 7,500 to be killed by the company to repay them for the outlay demanded for the support of the 300 people on the Pribyloff Islands. He further directs that no females be killed, and that thus the productive capacity of the herd shall not in the slightest degree be impaired.

This point being fixed and agreed to, the proposed arrangement between the two countries would be as follows:

The Government of the United States limits the number of seals to be killed on the islands, for purposes just described, to 7,500.

The Government of the United States guarantees that no seals shall be killed in the open waters of the Bering Sea by any person on any vessel sailing under the American flag, or by any American citizen sailing under any other flag.

The Government of Great Britain guarantees that no seals shall be killed in the open waters of the Behring Sea by any person on any vessel sailing under the British flag, and that no British subject shall engage in killing seals for the time agreed upon on any vessel sailing under any other flag.

These prohibitions shall continue until the 1st day of May, 1892, within which time the arbitrators shall render final award or awards to both Governments.

These several propositions are submitted for the consideration of Lord Salisbury. The President believes that they are calculated to produce a result at once fair and honorable to both Governments, and thus lead to the permanent adjustment of a controversy which has already been left too long at issue.

I have, etc.,

JAMES G. BLAINE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, May 5, 1891.

SIR: I have the honor to acknowledge the receipt of your note of yesterday, in which you have formulated for the consideration of the Marquis of Salisbury detailed proposals for a *modus vivendi* during the approaching fishery season in Behring Sea on the principle of a cessation of seal killing, both at sea and on land, an arrangement to which, as I informed you in my note of the 20th ultimo, his lordship was disposed to give his favorable consideration.

I have forwarded to Lord Salisbury by this day's mail a copy of your note, and I have telegraphed to his lordship the precise terms of the proposal with which it concludes.

I much regret to find that a misconception has arisen as regards your complaint of delay on my part in acquainting Lord Salisbury with second alternative proposal for a cessation of seal killing at sea and on land, which you originally made to me verbally.

On that occasion you may remember that I expressed some reluctance at sending any further proposals to his lordship while his dispatch of February 21 last (submitting amendments on the questions for arbitration) remained unanswered, and that I suggested that it would be more satisfactory if this new proposal were made concurrently with your reply to that dispatch, which I hoped to receive with the least possible delay.

I understood you to assent to that suggestion, and to say that "you would proceed in that order."

If you had informed me that the President for any reason desired that this alternative proposal should be telegraphed to Lord Salisbury, I need hardly say that I should have complied at once with his wishes. But I can not call to mind that the President's name was ever mentioned at our interview, which you correctly describe as "a conversational exchange of views." Fortunately, however, no appreciable loss of time occurred. I acquainted Lord Salisbury with your alternative proposal by the mail of the 7th of April (a few days only after it was made), and I received a prompt answer by telegraph, which enabled me to inform you by my note of April 20 that his lordship was disposed to consider the proposal favorably.

At an interview at your residence on the 23d of April you expressed your satisfaction at Lord Salisbury's reply, and you stated that before taking any further steps you desired to communicate by telegraph with the President.

At a further interview at your residence on the 27th you informed me that the President desired that the *modus vivendi* should contain a reservation of the right to kill a certain number of seals for the support of the natives of the Pribyloff Islands. At first sight this reservation caused me some disappointment. It certainly appeared to me open to exception as detracting from the principle of equality, which was a feature of the original proposal. But I was more concerned at your stating that it never was the intention of the President or of yourself that the *modus vivendi* should be put in force until the terms of arbitration had been settled.

This, I feared, would prevent the timely application of the *modus vivendi*, and I so informed Lord Salisbury by telegram on the same day.

I notice with satisfaction that no such condition is affixed to your present proposal, although the reservation as to the killing of a limited number of seals on the islands is maintained.

I am glad to think that there is yet time to carry out for this fishery season any arrangement which may promptly be agreed to, and I hope that the above explanation may remove the impression you appear to have formed that there has been any delay on my part in expediting the consideration of the *modus vivendi* which you have proposed.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Adee to Sir Julian Pauncefote.

[Personal.]

DEPARTMENT OF STATE,
Washington, May 20, 1891.

MY DEAR SIR JULIAN: The President is desirous to learn the reply of Her Majesty's Government to the proposition submitted in Department's note of the 4th instant, to stop sealing by citizens of the United States as well as by subjects of Her Majesty pending the arbitrations of questions in dispute touching the seal fisheries in Behring Sea.

I should be glad to know as soon as possible the present state of the matter.

I remain, etc.,

ALVEY A. ADEE,
Second Assistant Secretary.

Sir Julian Pauncefote to Mr. Adee.

[Personal.]

BRITISH LEGATION,
Washington, May 21, 1891.

DEAR MR. ADEE: I regret that I am not yet in a position to answer the inquiry of the President communicated to me in your letter of yesterday, but, immediately on its receipt, I telegraphed the substance of its contents to the Marquis of Salisbury, and I hope to receive in the course of to-day a telegram from his lordship in reply.

You may rely on my using the utmost expedition in the matter.

I remain, etc.,

JULIAN PAUNCEFOTE.

Mr. Adee to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, May 26, 1891.

SIR: In my personal note of the 20th instant and on several occasions in oral communication, I have had the honor to express the desire of the President to be informed at the earliest possible moment of the response of Her Majesty's Government to the proposal, which formed the subject of Mr. Blaine's note to you of the 4th instant, that seal-taking on the islands and in the waters of Behring Sea be limited, as in said note expressed, as to citizens of the United States and subjects of Great Britain pending the arbitration of certain questions in controversy between the two Governments.

In several interviews with you since the 20th instant the desire of the President for an early response to the note of the 4th of May has been reaffirmed.

The situation evidently calls for prompt action. Each day's delay increases the existing difference in the ability of the respective governments to make the proposed limitation of seal-taking effective. It is reported that a large fleet of Canadian sealers has been for some weeks or months on the seas. They are daily going farther out of reach. The revenue cruisers have awaited definite orders. Their presence is urgently needed in the Behring Sea. Any further delay tends to defeat the very purpose for which the agreement is sought. It is quite incompatible with fairness and justice to our citizens that this should be permitted to continue.

Ample opportunity has been afforded to Her Majesty's Government to bring this condition to a close by an effective agreement; but the result is still uncertain and, to all appearances, remote. The President would be glad to know that it is near at hand and certain; but he can no longer hold back in furtherance of a vague hope, to the detriment of the legitimate interests of the Government and citizens of the United States.

I, am, therefore directed by the President to inform you that orders have been given to the revenue steamer *Rush* to proceed to the sealing islands.

Another revenue steamer, the *Corwin*, is at San Francisco, nearly ready to sail, and will very shortly put to sea. Should an agreement be reached before her departure, appropriate orders may still be sent by her to the islands. I mention this in order that you may comprehend how fully this Government desires to effect an arrangement for this season, and that you may realize how each day's delay lessens the ability of Her Majesty's Government to effectively coöperate with regard to British subjects and tends to destroy the practical utility of an agreement to limit the seal catch.

I am, etc.,

ALVEY A. ADEE,
Acting Secretary.

Sir Julian Pauncefote to Mr. Adee.

BRITISH LEGATION,
Washington, May 27, 1891.

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, and to inform you that I have communicated the substance of its contents to the Marquis of Salisbury by telegram.

I feel assured that his lordship will greatly regret any inconvenience which may be caused to your Government by the impracticability of returning an immediate reply to the proposal contained in Mr. Blaine's note to me of the 4th instant.

Lord Salisbury, as I had the honor to state to you verbally, is using the utmost expedition; but the lateness of the proposal and the conditions attached to it have given rise to grave difficulties, as to which his lordship has necessarily been in communication with the Canadian Government. His reply, however, may now arrive at any moment.

I have, etc.,

JULIAN PAUNCEFOTE.

Proposal of Her Majesty's Government for a modus vivendi in the Behring Sea during the present fishing season.

WASHINGTON, *June* 3, 1891. (Received June 4, 1891.)

(1) The Government of Great Britain and of the United States shall prohibit, until May, 1892, the killing of seals in Behring Sea or any islands thereof, and will, to the best of their power and ability, insure that subjects and citizens of the two nations, respectively, and the vessels flying their respective flags, shall observe that prohibition.

(2) During the period above specified the United States Government shall have the right to kill 7,500 seals.

(3) Consuls may at any time be appointed to the islands in the Behring Sea, and the United States Government will grant an "exequatur" to any such consuls.

(4) Unless the assent of Russia be obtained to this convention it shall not come into operation.

JULIAN PAUNCEFOTE.

Behring Sea arbitration.

WASHINGTON, *June* 3, 1891. (Received June 4, 1891.)

The undersigned has been instructed by the Marquis of Salisbury to inform the United States Government that Her Majesty's Government are prepared to assent to the first five questions proposed to be submitted to arbitration in the note of the Hon. James G. Blaine to the undersigned, dated the 14th of April last.

Her Majesty's Government can not give their assent to the sixth question formulated in that note. In lieu thereof, they propose the appointment of a commission to consist of four experts, of whom two shall be nominated by each Government, and a chairman who shall be nominated by the arbitrators. The commission shall examine and report on the question which follows:

For the purpose of preserving the fur-seal race in Behring Sea from extermination, what international arrangements, if any, are necessary between Great Britain and the United States and Russia or any other power?

As regards the question of compensation, Her Majesty's Government propose the following article:

It shall be competent to the arbitrators to award such compensation as in their judgment shall seem equitable to the subjects and citizens of either power who shall be shown to have been damnified in the pursuit of the industry of sealing by the action of the other power.

JULIAN PAUNCEFOTE.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, June 4, 1891.

SIR: I am directed by the President to say, in reply to your note of the 3d instant, conveying to the Government of the United States the

response of Her Majesty's Government to the proposal of Mr. Blaine for a *modus vivendi*, relating to the seal fisheries in Behring Sea during the present season—

First. In place of the first and second subdivisions of the agreement, as submitted to you, the President suggests the following:

(1) The Government of Great Britain shall prohibit, until May, 1892, the killing of seals in all that part of the Behring Sea lying east, eastwardly, or southeastwardly of the line described in article 1 of the convention between the United States and Russia, of date March 30, 1867, and will promptly take such steps as are best calculated effectively to insure the observance of this prohibition by the subjects and citizens of Great Britain and all vessels flying its flag.

(2) The Government of the United States shall prohibit, until May, 1892, the killing of seals in that part of Behring Sea above described, and on the shores and islands thereof, the property of the United States (in excess of 7,500 to be taken on the islands), and the Government of the United States will promptly take such steps as are best calculated effectually to insure the observance of this prohibition by the citizens of the United States and the vessels flying its flag.

These changes are suggested in order that the *modus* may clearly have the same territorial extent with the pending proposals for arbitration; that the stipulation for a prohibition of seal killing upon the islands of the United States may rest upon its own order; and that the obligation of the the respective governments to give prompt and vigorous effect to the agreement may be more clearly apparent.

Second. The pertinency of the suggestion contained in the third subdivision of Lord Salisbury's proposal is not apparent to the President. The statutes of the United States explicitly prohibit the landing of any vessels at the seal islands and the residence thereon of any person unless specifically authorized by the Secretary of the Treasury. It is, therefore, obvious that no consular functions could be discharged upon the islands by any representative of Her Majesty's Government. The President regards this law as declaring an exception as to the residence of consuls within the meaning of article 4 of the convention of commerce and navigation of December 22, 1815, between Her Majesty's Government and the United States. If the proposal is intended to relate to the islands of St. Paul and St. George, and has for its object access for such agents of the Government of Her Majesty as may be appointed to investigate facts that may be involved in the pending proposals for arbitration, or in the hearing before the arbitrators, I am directed by the President to say that, in the event of an agreement for arbitration of the questions in dispute between Great Britain and the United States, he would be willing to extend reasonable facilities to Great Britain for the investigation at the islands of any facts involved in the controversy.

Third. The fourth clause of the proposal of Her Majesty's Government, limiting the taking effect of the *modus vivendi* upon the assent of Russia, presents what seems to the President an insuperable difficulty, as an adherence to that suggestion by Her Majesty's Government will, in his opinion, prevent the conclusion of any agreement, and will inevitably cause such a delay as to thwart the purposes which he must suppose both Governments have had in view. He is surprised that this result did not suggest itself to Lord Salisbury, and does not doubt that it will be apparent to him on a reëxamination. I am also directed to remind you that the contention between the United States and Great

Britain has been limited to that part of Behring Sea eastward of the line of demarcation described in our convention with Russia, to which reference has already been made, and that Russia has never asserted any rights in these waters affecting the subject-matter of this contention, and can not therefore be a necessary party to these negotiations, if they are not now improperly expanded. Under the statutes of the United States, the President is authorized to prohibit sealing in the Behring Sea within the limits described in our convention with Russia and to restrict the killing of seals on the islands of the United States, but no authoriy is conferred upon him to prohibit or make penal the taking of seals in the waters of Behring Sea westward of the line referred to or upon any of the shores or islands thereof. It was never supposed by anyone representing the Government of the United States in this correspondence, or by the President, that an agreement for a *modus vivendi* could be broader than the subject of contention stated in the correspondence of the respective Governments.

Negotiations for an arbitration have been proceeding between the United States and Great Britain, and, if these powers are competent to settle by this friendly method their respective rights and relations in the disputed waters upon a permanent basis, it would seem to follow that no question could arise as to their competency to deal directly with the subject for a single season. If Great Britain now insists upon impossible conditions, viz, that the conclusion of the *modus vivendi* is to be delayed until, and made contingent upon, the assent of Russia to stop the killing of seals on its own islands and in its own waters, and upon the exercise by the President of powers not conferred by law, this would be, in his opinion, a practical withdrawal by Great Britain from the negotiations for a *modus vivendi*. This he would very much regret, and he confidently hopes that a reconsideration will enable Lord Salisbury to waive the suggestion of Russia's participation in the agreement and the inclusion of other waters than those to which the contention between the United States and Great Britain relates.

In case the terms of the *modus vivendi* are agreed upon, the President suggests that a provision, heretofore considered in another connection in the general correspondence, by which the naval or other duly commissioned officers of either party may arrest any offending vessel and turn it over at the nearest port of the nation whose flag it carries for such judicial proceedings as the law provides, should be incorporated here, the more effectually to carry out the stipulations of the respective Governments to prohibit their citizens and vessels from taking seals in the specified waters of Behring Sea.

Having, with a view to an exigency which he has several times caused to be explained to you, promptly responded to the suggestions of your note of yesterday, the President directs me to say that he will be pleased to have from Lord Salisbury a prompt response to these suggestions.

I am further directed by the President to say that your note of the same date, referring to the conditions of the proposed arbitration, and stating the objection of Lord Salisbury to some points in the proposal of Mr. Blaine, will have the early attention of the President.

I have, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, June 6, 1891.

SIR: Immediately on the receipt of your note of the 4th instant, relative to the proposed *modus vivendi* in Behring Sea, I communicated its contents to the Marquis of Salisbury by telegraph. I have now the honor to inform you that late last night I received a telegraphic reply from his lordship, of which the substance is contained in the inclosed memorandum.

I have, etc.,

JULIAN PAUNCEFOTE.

BEHRING SEA MODUS VIVENDI.

[Inclosure in Sir Julian Pauncefote's letter.—Memorandum.]

Her Majesty's Government accept the proposal of the President that the *modus vivendi*, if agreed upon, should provide that "the naval or other duly commissioned officers of either party may arrest any offending vessel and turn it over to the nearest port of the nation whose flag it carries for such judicial proceedings as the law provides." By accepting this proposal Her Majesty's Government give to the cruisers of the United States the power of supervising the conduct of British subjects in observing the proposed agreement at sea. This is a concession which, in Lord Salisbury's opinion, entitles Her Majesty's Government to ask from the United States the corresponding power of supervising the proceedings of the United States citizens on the seal islands. It is on the fidelity with which the condition of not killing more than 7,500 seals is observed that the equality of the proposed agreement depends. Her Majesty s Government, therefore, regard it as indispensable that they should have the right of satisfying themselves that this condition is fully observed by citizens of the United States. If there be an objection on the part of the United States Government to issuing an exequatur to a permanent consul on the seal islands, Lord Salisbury suggests that they can, under the statute "specifically authorize" the residence thereon of a British agent during the present season.

His lordship will not insist on the condition that Russia shall be a party to the agreement, but he must earnestly press the United States Government to extend the prohibition to their citizens and vessels over the entire area of Behring Sea. In that case Her Majesty's Government on their part will similarly extend the prohibition to British subjects and vessels.

Lord Salisbury points out that, if seal-hunting be prohibited on one side of a purely imaginary line drawn in the open ocean, while it is permitted on the other side of the line, it will be impossible in many cases to prove unlawful sealing or to infer it from the possession of skins or fishing tackle.

In conclusion, Lord Salisbury states that Her Majesty's Government consider it a matter of great importance that the two Governments should agree on the terms of arbitration at the same time as on a *modus vivendi*. The suspension of sealing is not a measure which they could repeat another year.

JULIAN PAUNCEFOTE.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, June 6, 1891.

SIR: I am directed by the President to say that he has received with great satisfaction the note of Lord Salisbury of to-day's date in reply to my note of the 4th instant. He directs me to ask you to remind Lord Salisbury that the limitation of the killing of seals upon the islands is absolutely within the control of the United States, as a daily count is

made by sworn officers, and to inform him that already, in order to assure such control pending these negotiations, the agents of the Treasury Department, who have been dispatched to the seal islands, have been instructed to stop the killing when 7,500 have been taken and to await the arrival of further orders, though ordinarily the taking of seals on the islands does not begin until about July 1. The enforcement of an agreed limitation being so fully in the control of the United States, the President is sure that Lord Salisbury will not question the absolute good faith of this Government in observing its stipulation to limit the catch to 7,500. This Government could not, of course, consent to any arrangement that implied such a doubt or involved any foreign supervision on the islands. If the prompt and effectual recall of the fleet of Canadian sealers now at sea was as fully within the control of Great Britain, the President would not have suggested the provision for the arrest by either party of vessels violating the prohibition, but would have rested confidently in the assurance given by Her Majesty's Government.

But in view of the fact that the evidence which the respective governments will present to the arbitrators (if that happy solution of the pending difficulties shall be attained) must be collected during the present season, and as the definitive agreement for arbitration can not be concluded contemporaneously with this agreement, the President directs me to say that he is quite willing to agree that Her Majesty's Government may send to the seal islands, with a view to collecting the facts that may be involved in an arbitration, and especially facts relating to seal life and to the results of the methods which have been pursued in the killing of seals, a suitable person or persons to make the necessary observations. The present and the comparative conditions of the rookeries may become an important consideration before arbitrators in a certain event, and the President would not ask that the evidence upon this subject should be wholly from one side. He is desirous that the prohibition of the killing of seals for this season shall be as wide and absolute as possible, and will not omit the exercise of any power confided to him by law to promote that end. He directs me to assure Lord Salisbury that he is extremely desirous to bring to a speedy conclusion the pending negotiations for the submission to impartial arbitration of the points of difference between the two governments, and regrets that, for reasons which have been explained to you, an immediate answer can not be returned to his lordship's note upon that subject of the 2d instant. He feels sure, however, that the prompt announcement of an agreement for a *modus* for this season, while there is yet time to make it mutually effective, will not fail to have a happy influence upon the final negotiations.

It is hoped that authority may be given to you, as the representative of Her Majesty's Government at this capital, to conclude, immediately upon the passage of the bill now pending in Parliament, the following agreement:

For the purpose of avoiding irritating differences and with a view to promote a friendly settlement of the questions pending between the governments of Great Britain on the one side and the United States of America on the other, touching the rights of the respective nations in the Bering Sea, the following agreement is made, which shall have no effect to limit or prejudice the rights or claims of either power, except as therein expressly stipulated and for the time therein limited:

(1) The Government of Great Britain will prohibit until May, 1892, the killing of seals in all that part of the Behring Sea lying east, east

wardly, or southeastwardly of the line described in article 1 of the convention between the United States and Russia of date March 30, 1867, and will promptly take such steps as are best calculated effectively to insure the observance of this prohibition by the subjects and citizens of Great Britain and all vessels flying its flag.

(2) The Government of the United States will prohibit until May, 1892, the killing of seals in that part of Behring Sea above described, and on the shores and islands thereof, the property of the United States (except that 7,500 seals, and no more, may be taken on the islands); and the Government of the United States will promptly take such steps as are best calculated effectively to insure the observance of this prohibition by the citizens of the United States and the vessels flying its flag.

(3) All vessels or persons violating the laws of their respective governments in this regard outside the ordinary territorial limits may be seized and detained by the naval or other duly commissioned officers of either of the high contracting parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong for trial and for the imposition of the penalties and forfeitures provided by law.

(4) In order to facilitate such proper inquiries as Her Majesty's Government may desire to make with a view to the presentation of the case of that Government before arbitrators, and in the expectation that an agreement for arbitration may ultimately be reached, it is agreed that a suitable person or persons, to be designated by Great Britain, will be permitted at any time, upon application, to visit or to remain upon the seal islands during the present sealing season for that purpose.

I have, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, June 8, 1891.

SIR: I have the honor to acknowledge the receipt of your note of the 6th instant containing the terms of a proposed agreement for a *modus vivendi* during the present seal-fishery season in Behring Sea, which I communicated at once by telegraph to the Marquis of Salisbury.

I have this day received a reply from his lordship, in which he transmits a draft of the proposed agreement, with certain modifications and additions.

I beg to inclose a copy of it, and to request that you will be good enough to submit it to your Government for their consideration.

I have, etc.,

JULIAN PAUNCEFOTE.

AGREEMENT.

[Inclosure in Sir Julian Pauncefote's letter.]

For the purpose of avoiding irritating differences and with a view to promote friendly settlement of the questions pending between the two Governments, touching

their respective rights in Behring Sea and for preservation of the seal species, the following agreement is made without prejudice to the rights or claims of either party:

(1) Her Majesty's Government will prohibit, until May next, seal killing in that part of Behring Sea lying eastward of the line of demarcation described in article No. 1 of the treaty of 1867 between the United States and Russia, and will promptly use best efforts to insure observance of prohibition by British subjects and vessels.

(2) The United States Government will prohibit seal killing for the same period in the same part of Behring Sea and on the shores and islands thereof, the property of the United States (in excess of 7,500 to be taken on the islands as food skins, and not for tax or shipment), and will promptly use best efforts to insure observance of prohibition by United States citizens and vessels.

(3) Every offending vessel or person may be seized and detained by the naval or other duly commissioned officers of either of the high contracting parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong, who shall alone have jurisdiction to try the offense and impose the penalties for the same.

The witnesses and proofs necessary to establish the offense shall also be sent with them, and the court adjudicating upon the case may order such portion of the fines imposed, or of the proceeds of the condemned vessel, to be applied in payment of the expenses occasioned thereby.

(4) In order to facilitate such proper inquiries as Her Majesty's Government may desire to make with a view to the presentation of the case of that Government before arbitrators, and in expectation that an agreement for arbitration may be arrived at, it is agreed that suitable persons designated by Great Britain will be permitted at any time, upon application, to visit or to remain upon the seal islands during the present sealing season for that purpose.

(5) A commission of four experts, two nominated by each Government, and a chairman nominated by the arbitrators, if appointed, and, if not, by the aforesaid commission, shall examine and report on the following question:

What international arranagements, if any, between Great Britain and the Un d States and Russia or any other Power are necessary for the purpose of preserving the fur-seal race in the northern Pacific Ocean from extermination?

(6) The Government of the United States will join with that of Her Majesty in requesting Russia to forbid her subjects from sealing to the east of the line indicated in article No. 1 of the present agreement until the 1st of May, 1892.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, June 9, 1891.

SIR: I am directed by the President, in response to your note of June 8, delivered this morning, to say that he regrets that, at the moment when the two Governments seemed to have reached an agreement in this matter (which is one calling for the utmost promptness of action), new conditions should be suggested by Lord Salisbury. With the acceptance of the proposition submitted in my last note, relating to permission to British agents to visit the seal islands, an agreement had been reached upon all the conditions that had been previously discussed or suggested in this connection. The President does not object to the modification of his proposal suggested in the first article submitted by you, for he assumes that the terms used, while not as strong. perhaps, as those suggested by this Government, do fully commit the Government of Great Britain to prompt and energetic measures in the repression of the killing of seals by the subjects and vessels of that nation.

The proposal submitted by you on June 3 contained this clause: "During the period above specified the United States Government shall have the right to kill 7,500 seals." Now, his lordship adds a most extra-

ordinary, and not altogether clear, condition (I quote), "to be taken on the shores and islands as food skins, and not for tax or shipment."

This new condition is entirely inadmissible and, in the opinion of the President, inconsistent with the assent already given by Her Majesty's Government to the proposition of the United States in that behalf. It had been particularly explained in the correspondence that the lessees of the privilege of taking seals upon the islands assumed obligations to supply to the natives the food and other things necessary for their subsistence and comfort, and that the taking of the limited number of seals was not only to supply flesh to the natives, but, in some part, to recompense the company for furnishing other necessary articles of food, clothing, and fuel. The President is surprised that it should now be suggested that none of these skins should be removed from the island, and he can not understand how British interests can be promoted by allowing them to go to waste.

The previous communications of Her Majesty's Government had, in the opinion of the President, concluded this matter.

As to the third clause of your proposition, I am directed to say that the contention between the United States and Great Britain has relation solely to the respective rights of the two governments in the waters of Behring Sea outside of the ordinary territorial limits, and the stipulations for the coöperation of the two governments during this season have, of course, the same natural limitation. This is recognized in articles 1 and 2 of your proposal, for you will observe that the obligation assumed by Her Majesty's Government is to prohibit seal-killing in a certain part of Behring Sea, whereas the obligation assumed in the second article by the Government of the United States is to prohibit seal-killing in the same part of Behring Sea and the shores and islands thereof, the property of the United States. The killing, therefore, of seals on the islands or within the territorial waters of the United States falls only within the prohibition of this Government. His lordship will also see that it is altogether beyond the power of the President to stipulate that an offense committed in the undisputed territory of the United States against its laws shall be triable only in the courts of another nation. The extension of this clause to the territory and territorial waters of the United States, therefore, involves an insuperable legal difficulty on our part and a concession which no independent Government could be expected to make. The mutual police, which is to be stipulated for, could not, in the nature of things, apply to the territorial waters within the undisputed and exclusive jurisdiction of either.

To the fourth clause, which is in substance the same as the proposition made by this Government, no objection is interposed.

As to the fifth clause, I am directed to say that the President regards the proposition to appoint a joint commission to investigate and report as to what regulations or international agreements are necessary to preserve the seal fisheries to be one of the incidents of the agreement for arbitration and to have no proper place here. This distinction seems to have been recognized by his lordship, and his proposal of such a commission was made part of the separate note discussing the terms of arbitration presented by you on June 3, and has never until now appeared in the correspondence relating to a *modus vivendi*. The President thinks the fourth clause, which has been accepted, makes ample present provision, but will give a full consideration to the suggestion of a joint commission in connection with the negotiation for arbitration.

To the sixth and last clause the President directs me to say that, so far as he is aware, no vessel bearing the Russian flag has at any time intruded into the waters described in the proposed agreement. He is entirely in sympathy with the expressed desire of Lord Salisbury to secure such limitations as to the hunting of seals in the whole of Bering Sea as will preserve to mankind this valuable industry; but he does not think that an agreement to unite in any joint note to Russia should be interposed here and at this time. Moreover, Lord Salisbury will perceive that, in the present state of the American law, if Russia should ask for reciprocal action by this Government west of the treaty line, the President would be confronted with the same difficulty that prevented him from extending the agreement with Her Majesty's Government to the whole of Behring Sea.

As the President understands, the adhesion of the two Governments has been given in this correspondence to the following propositions:

For the purpose of avoiding irritating differences and with a view to promote friendly settlement of the questions pending between the two Governments, touching their respective rights in Behring Sea, and for the preservation of the seal species, the following agreement is made without prejudice to the rights or claims of either party:

(1) Her Majesty's Government will prohibit, until May next, seal-killing in that part of Behring Sea lying eastward of the line of demarkation described in article No. 1 of the treaty of 1867 between the United States and Russia, and will promptly use its best efforts to insure the observance of the prohibition by British subjects and vessels.

(2) The United States Government will prohibit seal-killing for the same period in the same part of Behring Sea and on the shores and islands thereof, the property of the United States (in excess of 7,500 to be taken on the islands for the subsistence and care of the natives), and will promptly use its best efforts to insure the observation of this prohibition by United States citizens and vessels.

(3) Every vessel or person offending against this prohibition in the said waters of Behring Sea, outside of the ordinary territorial limits of the United States, may be seized and detained by the naval or other duly commissioned officers of either of the high contracting parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong, who shall alone have jurisdiction to try the offense and impose the penalties for the same. The witnesses and proofs necessary to establish the offense shall also be sent with them.

(4) In order to facilitate such proper inquiries as Her Majesty's Government may desire to make with a view to the presentation of the case of that Government before arbitrators, and in expectation that an agreement for arbitration may be arrived at, it is agreed that suitable persons designated by Great Britain will be permitted at any time, upon application, to visit or to remain upon the seal islands during the present sealing season for that purpose.

The President directs me to inform you that the Government of the United States is ready to conclude this agreement, if it can be put into force immediately. The value of such an agreement to the United States is daily lessening, and the President therefore feels that he must ask that the negotiations be brought to a speedy determination.

I have, etc.,

WILLIAM F. WHARTON.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, June 10, 1891.

SIR: I have the honor to acknowledge the receipt of your note of June 9, delivered this day, in reply to my note of the 8th, in which I transmitted for the consideration of your Government the draft of a proposed agreement for a *modus vivendi* during the present fur-seal fishery season in Behring Sea, with certain modifications and additions suggested therein by the Marquis of Salisbury.

I have telegraphed the substance of your note under reply to his lordship, and I hope to be able to communicate to you his observations thereon in the course of to-morrow or the following day. In the meanwhile, with reference to the complaint that new conditions should have been suggested at this stage by Lord Salisbury, I would beg leave to point out that all his lordship's suggestions are obviously dictated by a desire to render the *modus vivendi* more effective and to do all that is possible in the common interest for the protection and the preservation of the seal species during the present season.

In my humble opinion, therefore, it is to be regretted that those suggestions should not have commended themselves to the favorable consideration of the President. Thus the object of the proposed insertion in article 2 of the words "food skins, and not for tax and shipment," which you qualify as "extraordinary," was not to prevent the export and sale of the 7,500 seal skins, of which the proceeds are intended to cover the cost of food, clothing, fuel, and other necessaries for the natives. Its sole object was to stop the injurious practice of driving and redriving the herds to the killing grounds for selection, which is resorted to in the case of seals killed "for tax and shipment," and is stated by experts to be the main cause of the depletion of male seal life on the islands.

I would refer you on this point to the report of Special Treasury Agent C. J. Goff, laid before Congress (Ex. Doc. No. 49), pp. 4 and 29; also to the report of Assistant Treasury Agent Joseph Murray, at page 8; and that of Assistant Treasury Agent A. W. Lavender, at page 9, of the same Congressional paper.

As regards Lord Salisbury's proposal of a joint commission, it is by no means a new one. It has long been called for by public opinion in both countries. It was inserted among Lord Salisbury's last proposals for the arbitration agreement in the expectation that the latter document would be signed contemporaneously with the agreement for a *modus vivendi*. But as your Government is not prepared to bring the arbitration negotiation to a conclusion without further consideration, and as it is of the highest importance that the joint commission should be appointed at once, in order to enter upon its functions during the present fishery season, Lord Salisbury has had no alternative but to urge the insertion of the article providing for a joint commission in the agreement for the *modus vivendi*, of which it should, in the opinion of Her Majesty's Government, be a component part.

The objection of the President to that article in the *modus vivendi* appears to me to create the greatest difficulty which has yet presented itself in the course of this negotiation, and I earnestly hope that, if Lord Salisbury should be disposed to waive the other conditions to which exception is taken in your note, the President, on his part, will accede to his lordship's wishes in respect of the joint commission.

I have, etc.,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, June 11, 1891.

SIR: With reference to my note of yesterday, and especially to the concluding part of it, I have the honor to inform you that I have this day received by telegraph from the Marquis of Salisbury a reply to the proposal for a *modus vivendi* during the present fur-seal fishery season in Behring Sea, contained in your note of June 9.

His lordship states that the President's refusal to adopt his suggestions with respect to Russia renders the proposed *modus vivendi* much less valuable, and that he is reluctant to abandon the words which he had proposed for insertion in article 2 in relation to the reservation of the 7,500 seals to be killed on the islands.

Nevertheless, in view of the urgency of the case, his lordship is disposed to authorize me to sign the agreement in the precise terms formulated in your note of June 9, provided the question of a joint commission be not left in doubt and that your Government will give an assurance in some form that they will concur in a reference to a joint commission to ascertain what permanent measures are necessary for the preservation of the fur-seal species in the Northern Pacific Ocean.

I have the honor, therefore, to inquire whether the President is prepared to give that assurance, and, if so, I shall, on receipt of it, lose no time in communicating it by telegraph to Lord Salisbury and in applying to his lordship for authority to sign the proposed agreement.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, June 11, 1891.

SIR: I have the honor to acknowledge the receipt of your note of to-day's date, and in reply I am directed by the President to say that the Government of the United States, recognizing the fact that full and adequate measures for the protection of seal life should embrace the whole of Behring Sea and portions of the North Pacific Ocean, will have no hesitancy in agreeing, in connection with Her Majesty's Government, to the appointment of a joint commission to ascertain what permanent measures are necessary for the preservation of the seal species in the waters referred to, such an agreement to be signed simultaneously with the convention for arbitration, and to be without prejudice to the questions to be submitted to the arbitrators.

A full reply to your note of June 3 relating to the terms of arbitration will not be long delayed.

I have, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, June 13, 1891.

SIR: I lost no time in telegraphing to the Marquis of Salisbury the contents of your note of June 11, conveying the assent of your Govern-

ment to the appointment, in connection with Her Majesty's Government, of a joint commission for the purpose mentioned in my note to you of the same date, such agreement to be signed simultaneously with the convention for arbitration, and to be without prejudice to the questions to be submitted to the arbitrators.

I informed his lordship at the same time that, in handing me the note under reply, you had assured me that the President was anxious that the commission should be appointed in time to commence its work this season, and that your Government would, on that account, use their utmost efforts to expedite the signature of the arbitration convention.

I now have the honor to inform you that I have this day received a telegraphic reply from Lord Salisbury, in which, while conveying to me authority to sign the proposed agreement for a *modus vivendi* contained in your note of June 9, his lordship desires me to place on record that it is signed by me on the clear understanding that the joint commission will be appointed without delay.

On that understanding, therefore, I shall be prepared to attend at the State Department, for the purpose of signing the agreement, at such time as you may be good enough to appoint.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, June 13, 1891.

SIR: The President directs me to say, in response to your note of this date, that his assent to the proposition for a joint commission, as expressed in my note of June 9, was given in the expectation that both Governments would use every proper effort to adjust the remaining points of difference in the general correspondence relating to arbitration, and to agree upon the definite terms of a submission and of the appointment of a joint commission without unnecessary delay.

He is glad that an agreement has finally been reached for the pending season; and I beg to say that, if you will call at the Department at 10 o'clock Monday next, I will be glad to put into writing and give formal attestation to the *modus vivendi* which has been agreed upon.

I have, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Modus vivendi respecting the fur-seal fisheries in Behring Sea.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an agreement for a modus vivendi between the Government of the United States and the Government of Her Britannic Majesty, in relation to the fur-seal fisheries in Behring Sea, was concluded on

the fifteenth day of June, in the year of our Lord one thousand eight hundred and ninety-one, word for word as follows:

Agreement between the Government of the United States and the Government of Her Britannic Majesty for a modus vivendi in relation to the fur-seal fisheries in Behring Sea.

For the purpose of avoiding irritating differences and with a view to promote the friendly settlement of the question pending between the two Governments touching their respective rights in Behring Sea, and for the preservation of the seal species, the following agreement is made without prejudice to the rights or claims of either party:

(1) Her Majesty's Government will prohibit, until May next, seal killing in that part of Behring Sea lying eastward of the line of demarcation described in Article No. 1 of the treaty of 1867 between the United States and Russia, and will promptly use its best efforts to ensure the observance of this prohibition by British subjects and vessels.

(2) The United States Government will prohibit seal killing for the same period in the same part of Behring Sea and on the shores and islands thereof, the property of the United States (in excess of 7,500 to be taken on the islands for the subsistence and care of the natives), and will promptly use its best efforts to ensure the observance of this prohibition by United States citizens and vessels.

(3) Every vessel or person offending against this prohibition in the said waters of Behring sea outside of the ordinary territorial limits of the United States, may be seized and detained by the naval or other duly commissioned officers of either of the High Contracting Parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong, who shall alone have jurisdiction to try the offense and impose the penalties for the same. The witnesses and proofs necessary to establish the offense shall also be sent with them.

(4) In order to facilitate such proper inquiries as Her Majesty's Government may desire to make, with a view to the presentation of the case of that Government before arbitrators, and in expectation that an agreement for arbitration may be arrived at, it is agreed that suitable persons designated by Great Britain will be permitted at any time, upon application, to visit or to remain upon the seal islands during the present sealing season for that purpose.

Signed and sealed in duplicate at Washington, this fifteenth day of June, 1891, on behalf of their respective Governments, by William F. Wharton, Acting Secretary of State of the United States, and Sir Julian Pauncefote, G. C. M. G., K. C. B., H. B. M. Envoy Extraordinary and Minister Plenipotentiary.

WILLIAM F. WHARTON [SEAL].
JULIAN PAUNCEFOTE [SEAL].

Now, therefore, be it known that I, Benjamin Harrison, President of the United States of America, have caused the said agreement to be made public, to the end that the same and every part thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this fifteenth day of June, in the year of our Lord, one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

[SEAL.] BENJ. HARRISON.

By the President:

WILLIAM F. WHARTON,
Acting Secretary of State.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, June 20, 1891.

SIR: I have the honor to transmit to you herewith copies of the instructi[ons] have been issued by the Secretary of the Navy, in pur-

suance of the proclamation of the President of June 15, 1891, relative to the *modus vivendi* respecting the fur-seal fisheries in Bering Sea.

This Government would be pleased to receive in exchange copies of such instructions as may be issued by Her Britannic Majesty's Government on the same subject.

I have, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Mr. Tracy to Mr. Wharton.

NAVY DEPARTMENT,
Washington, June 19, 1891.

SIR: I have the honor to transmit herewith a copy of the instructions which have been issued by the Navy Department, in pursuance of the proclamation of the President of June 15, 1891, containing a *modus vivendi*, with a view to their exchange, should it be deemed desirable, for a copy of such instructions as may be issued by the British Government on the same subject.

Very respectfully,

B. F. TRACY,
Secretary of the Navy.

Mr. Tracy to commanding officer of Thetis.

[Telegram.]

NAVY DEPARTMENT,
Washington, June 15, 1891.

COMMANDING OFFICER U. S. S. THETIS,
San Francisco, Cal.:

Proclamation of President closing Bering Sea has been telegraphed to collector of port of San Francisco. Make immediate application for copies as soon as received; proceed with *Thetis* to Sand Point, Popoff Island; distribute the proclamation among the sailing vessels. Warn master of each vessel to whom you may deliver proclamation that name of vessel has been taken, and that vessel will be liable to capture if found to have been or to be sealing in Bering Sea east of line of demarcation after notice. Furnish all United States and British vessels of war and revenue cutters with lists of vessels warned. Remain in neighborhood of Sand Point until receipt of further instructions, which will be sent by *Marion*. Receive on board and transport to Sand Point, C. H. Bullard, deputy collector of customs, but do not delay sailing on his account.

TRACY.

Mr. Tracy to commanding officer of Mohican.

NAVY DEPARTMENT,
Washington, June 15, 1891.

COMMANDING OFFICER U. S. S. MOHICAN,
San Francisco, Cal.:

Obtain immediately from collector of customs, San Francisco, printed copies of President's proclamation in reference to Bering Sea. On receipt of such copies, proceed with all dispatch to the vicinity of the Pribyloff Islands, St. Paul and St. George. Notify all American and British persons and vessels you meet of the proclamation, and give them copies of the same. Warn all persons and vessels of either nationality engaged in sealing in Bering Sea east of the line of demarcation, as shown on hydrographic office chart No. 68, to leave those waters forthwith. Make entry of warning on register or log of sealer. Seize any American or British persons and vessels found to be or to have been engaged in sealing, after notice, within the prohibited waters, and bring or send them in charge of a sufficient force to insure delivery, to nearest convenient port of their own country, together with witnesses and proofs,

and there deliver them to proper officer of court in said port. Send at least the master of the seized vessel, her mate or boatswain, all her cargo, and such of her crew as you deem safe in the seized vessel. At the time of seizure draw up declaration in writing showing condition of seized vessel, place and date of seizure, giving latitude and longitude, and circumstances showing guilt. Sign declaration and send, with ship's papers and seized vessel, to officer of court. Deliver to master of seized vessel signed and certified list of papers found on board. Officer in charge of seized vessel will, at time of delivering vessel's papers to court, sign a certificate stating any changes that may have taken place in respect to vessel, crew, or cargo since seizure.

Keep a list of all vessels to which notice of proclamation has been given, and furnish all United States and British war or revenue vessels with copies of list. Before sailing, get order from Alaskan Commercial Company, San Francisco, to coal at Oonalaska. After two weeks' cruising in neighborhood of Pribyloff Islands, rendezvous at Sand Point, Popoff Island, one of the Shamagin group, with *Thetis* and *Alert*, and await there further instructions by *Marion*.

Furnish copy of this order to commanding officer of *Alert*, and direct him to comply with it.

TRACY.

Mr. Tracy to commanding officer of the Mohican.

[Confidential.]

NAVY DEPARTMENT,
Washington, June 16, 1891.

Commander C. S. Cotton,
Commanding U. S. S. Mohican, San Francisco, Cal.:

Until further instructed, you are placed in command of all United States vessels of war cruising in the neighborhood of Bering Sea, and you will distribute the force in such manner as, in your judgment, will best enable you to comply with the orders of the Department and the requirements of the President's proclamation. Instruct vessels under your command to send all seized persons and vessels to Oonalaska, to which point chartered steamer will be sent from San Francisco with marine guard. Steamer will be at your disposal. Instructions have been sent to revenue cutters to turn over persons and vessels seized by them to you at Oonalaska. Utilize the chartered steamer to the best advantage to assist in executing the proclamation and to hand over as soon as practicable all seized persons and vessels to authorities of nation to which they respectively belong. Orders directing *Thetis*, *Alert*, and *Mohican* to rendezvous at Sand Point revoked. *Thetis* will proceed to Sand Point, as directed, to distribute proclamation and give notice, and will proceed thence to Oonalaska immediately after departure of British steamer which visits Sand Point about July 1 to bring home coast catch of seal. *Mohican* and *Alert*, after cruising two weeks, as previously directed, in Bering Sea, will rendezvous with *Thetis* at Oonalaska instead of Sand Point. *Marion* will sail later and join your command at Oonalaska at about same time. Has *Thetis* already sailed? If so, you must communicate with her at Sand Point, where her orders of yesterday directed her to await your arrival. On receipt of this order proceed immediately to Bering Sea with *Thetis*, *Mohican*, and *Alert*. Telegraph departure.

B. F. TRACY.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, June 21, 1891.

SIR: I have the honor to inform you that I have received a communication from Her Majesty's principal secretary of state for foreign affairs to the effect that the Queen has been graciously pleased to appoint Sir George Baden Powel, M. P., and Prof. Dawson, commissioners to proceed to the Pribyloff Islands for the purpose of examining into the fur-seal fishery in Bering Sea.

In accordance with the instruction of the Marquis of Salisbury, I

have the honor to request that permission may be granted to these gentlemen to visit and remain on those islands during the current fishery season.

I have, etc.,

JULIAN PAUNCEFOTE.

Bering Sea modus vivendi.

[Memorandum.]

WASHINGTON, *June* 23, 1891.

The following instructions have been issued to the British senior naval officer at Esquimault: He is to proceed to Bering Sea with Her Majesty's ships *Nymphe* and *Pheasant* and cruise to the eastward of the line of demarcation mentioned in articles 1 and 2 of the *modus vivendi*, warning all British vessels found acting in ignorance of the prohibition. He is to confiscate the sealing equipment of any British vessel found deliberately offending, recording her name and the name of her master for prosecution afterwards. He is to arrest any American vessel found deliberately offending and record her name and the name of her captain, together with the proof of the offense for which she is arrested, informing United States cruisers.

Her Majesty's ship *Porpoise* will be ordered from China to join the other ships under his command. Her Majesty's Government are of opinion that there should be an understanding between the two Governments for mutual indemnities. A cruiser of one nation arresting a vessel of the other can only be justified in doing so as the agent of such other nation, and should therefore act in that character.

Her Majesty's Government, therefore, suggest that the two Governments shall agree to indemnify each other in respect of any acts committed in pursuance of such agency by the cruisers of one nation against the vessels of the other in execution of the *modus vivendi*.

JULIAN PAUNCEFOTE.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, June 25, 1891.

SIR: The correspondence between this Government and that of Her Majesty has happily resulted in an agreement upon the first five propositions, which are to constitute the basis of a proposed arbitration relating to the controversy which has arisen as to the respective rights of the two Governments in the Bering Sea. In the note of Lord Salisbury, of the 21st of February last, he states his objection to the sixth proposition, as presented in the letter of Mr. Blaine of December 17, 1890, in the following words:

> The sixth question, which deals with the issues that will arise in case the controversy should be decided in favor of Great Britain, would, perhaps, more fitly form the substance of a separate reference. Her Majesty's Government have no objection to referring the general question of a closed time to arbitration, or to ascertain by that means how far the enactment of such a provision is necessary for the preservation of the seal species; but such reference ought not to contain words appearing to attribute special and abnormal rights in the matter to the United States.

I am now directed by the President to submit the following, which he thinks avoids the objection urged by Lord Salisbury:

(6) If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of regulations for the proper protection and the preservation of the fur seal in, or habitually resorting to, the Bering Sea, the arbitrators shall then determine what concurrent regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such regulations should extend; and, to aid them in that determination, the report of the joint commission, to be appointed by the respective Governments, shall be laid before them, with such other evidence as either Government may submit. The contracting powers furthermore agree to coöperate in securing the adhesion of other powers to such regulations.

In your note of the 3d instant you propose, on behalf of Her Majesty's Government, the following additional article:

It shall be competent to the arbitrators to award such compensation as, in their judgment, shall seem equitable to the subjects and citizens of either Power who shall be shown to have been damnified in the pursuit of the industry of sealing by the action of the other Power.

The President can not give his assent to this form of submitting the question of compensation. It entirely omits notice of the important fact that the Government of the United States, as the owner of the seal fisheries on the Priboloff Islands, has interests which have been injuriously affected by the pelagic sealing, of which complaint has been made in this correspondence.

This Government has derived a very large annual income from this property, and this income has, in the opinion of the President, been very seriously impaired and imperiled by the destruction of the seal in the sea while passing to and from the breeding grounds on these islands. The Government of Her Majesty has directly interposed to support the Canadian sealers, and will not, the President assumes, desire to avoid responsibility for any damages which have resulted to the United States or to its citizens, if it shall be found by the arbitrators that the pursuit of seals by these Canadian vessels in the sea was an infraction of the rights and an injury to the property of this Government. The proposal submitted by you distinctly limits the liability of Her Majesty's Government, in case of a decision in favor of the United States, to compensation to the citizens of this country. It will be apparent to Lord Salisbury that whatever damages have resulted from pelagic sealing as pursued by vessels flying the British flag have accrued to the United States or to its lessees. The President does not doubt that the purpose of Her Majesty's Government, in the proposal under discussion, was to secure to the party injured equitable compensation for injuries resulting from what may be found by the arbitrators to have been the unlawful and injurious act of either Government.

From the note of Lord Salisbury of February 21, to which reference has been made, I quote the following:

There is one omission in these questions which I have no doubt the Government of the President will be very glad to repair, and that is the reference to the arbitrator of the question, what damages are due to the persons who have been injured, in case it shall be determined by him that the action of the United States in seizing British vessels has been without warrant in international law.

I am directed by the President to propose the following seventh and final clause in the basis of arbitration:

(7) It shall be competent to the arbitrators to award such compensa-

tion as, in their judgment, shall seem equitable to the subjects or citizens of Great Britain whose vessels may have been seized by the United States in the Bering Sea, if such seizures shall be found by the arbitrators to have been unwarranted; and it shall also be competent to the arbitrators to award to the United States such compensation as, in their judgment, shall seem equitable for any injuries resulting to the United States or to the lessees from that Government of the privilege of taking seals on the Pribiloff Islands by reason of the killing of seals in the Bering Sea by persons acting under the protection of the British flag, outside of the ordinary territorial limits, and since the 1st day of January, 1886, if such killing shall be found to have been an infraction of the rights of the United States.

It being understood that an arrangement for a joint commission is to be made contemporaneously with the conclusion of the terms of arbitration, I am directed by the President to propose the following separate agreement:

Each Government shall appoint two commissioners to investigate conjointly with the commissioners of the other Government all the facts having relation to seal life in Bering Sea and the measures necessary for its proper protection and preservation. The four commissioners shall, so far as they may be able to agree, make a joint report to each of the two Governments; and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree. These reports shall not be made public until they shall be submitted to the arbitrators, or it shall appear that the contingency of their being used by the arbitrators can not arise.

I have, etc.,

WILLIAM F. WHARTON.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, June 26, 1891.

SIR: In accordance with the request contained in your note of the 21st instant, I have the honor to transmit to you herewith a letter addressed by the Acting Secretary of the Treasury to William H. Williams, esq., special agent in charge of the seal fisheries in Alaska, instructing him to afford to Sir George Baden Powell, M. P., and Prof. George Mercer Dawson, agents of Her Britannic Majesty to the Pribiloff Islands, the facilities desired to enable them to examine into the fur-seal fisheries in Bering Sea.

I have, etc.,

WILLIAM F. WHARTON.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, June 26, 1891.

The Acting Secretary of State presents his compliments to the British minister, and has the honor to state that the memorandum that Sir Julian Pauncefote left at the Department of State on the 24th instant, relative to the instructions given to Her Britannic Majesty's vessels in Bering Sea, was immediately communicated to the Navy Department for its information.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, June 27, 1891.

SIR: I have the honor to acknowledge the receipt of your note of the 25th instant in relation to the proposed Bering Sea arbitration, and to inform you that I transmitted a copy of it to the Marquis of Salisbury by the mail of the 26th.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, July 3, 1891.

SIR: Her Majesty's Government having appointed two agents to visit the Bering Sea under the agreement between that Government and the United States of date June 15, 1891, and the President being about to designate two persons to visit the Bering Sea for the purpose of examining all questions connected with seal life in that sea and the adjacent waters, I have the honor to propose that arrangements be made to have these agents of the respective governments go together so that they may make their observations conjointly.

Awaiting such communication as Her Majesty's Government may desire to make upon the subject,

I have, etc.,

WILLIAM F. WHARTON.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, July 6, 1891.

SIR: I have the honor to acknowledge the receipt of your note of the 3d instant, in which you propose that arrangements be made to enable the agents appointed by our respective Governments to visit the Bering Sea for the purpose of examining into seal life to go together, so that they may make their observations conjointly.

I at once communicated this proposal to the Marquis of Salisbury by telegram, and I have received a reply from His Lordship to the effect that a ship has already been chartered to take the British commissioners to the seal islands, and that the engagement could not now be canceled, but that the British commissioners will be instructed, when they arrive in the islands, to coöperate as much as possible with the commissioners to be appointed by your Government for the purposes of the inquiry.

I have, etc.,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, July 6, 1891.

SIR: I have the honor to transmit to you herewith, in accordance with instructions which I have received from the Marquis of Salisbury, copies of an act of Parliament enabling Her Majesty the Queen to prohibit by order in council the catching of seals by British ships in Bering Sea.

I likewise inclose copies of an order of Her Majesty in council issued in virtue of the powers given by the said act and prohibiting the catching of seals by British ships in Bering Sea, within the limits defined therein, from the 24th of June last until the 1st of May, 1892.

I have, etc.,

JULIAN PAUNCEFOTE.

ORDER IN COUNCIL.

[Enclosure 1 in Sir Julian Pauncefote's note.]

At the Court at Windsor, the 23d day of June, 1891. Present, the Queen's Most Excellent Majesty, Lord President, Earl of Limerick, Marquis of Salisbury, and Lord Arthur Hill.

Whereas by the seal fishery (Bering Sea) act, 1891, it is enacted that Her Majesty the Queen may by order in council prohibit the catching of seals by British ships in Bering Sea or such part thereof as is defined by the said order, during the period limited by the order:

And whereas the expression "Bering's Sea" in the said act means the seas known as Bering Sea within the limits described in an order under the said act.

Now therefore, Her Majesty, in virtue of the powers vested in her by the said recited act, by and with the advice of her privy council, is hereby pleased to order, and it is hereby ordered, as follows:

(1) This order may be cited as the seal fishery (Bering Sea) order in council, 1891.

(2) From and after the 24th day of June, 1891, until the 1st day of May, 1892, the catching of seals by British ships in Bering Sea as hereinafter defined is hereby prohibited.

(3) For the purposes of the said recited act and of this order the expression "Behring's Sea" means so much of that part of the Pacific Ocean known as Bering Sea as lies between the parallel of 65° 30′ north latitude and the chain of the Aleutian Islands, and eastward of the following line of demarcation, that is to say, a line commencing at a point in Bering Straits on the said parallel of 65° 30′ north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern or Ignalook and the Island of Ratmanoff or Noonarbook; and proceeding thence in a course nearly southwest through Bering Straits and the seas known as Bering Sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski to the meridian of 172° west longitude; thence from the intersection of that meridian in a southwesterly direction, so as to pass midway between the island of Attou and the Copper Island of the Kormanderski couplet or gronp in the North Pacific Ocean, to the meridian of 193° west longitude.

C. L. PEEL.

SEAL FISHERY (BEHRING'S SEA) ACT, 1891.

[Enclosure 2 in Sir Julian Pauncefote's note.]

54 Vict.] CHAPTER 19.

AN ACT to enable Her Majesty, by order in council, to make special provision for prohibiting the catching of seals in Behring's Sea by Her Majesty's subjects during the period named in the order. (11th June, 1891.)

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. (1) Her Majesty the Queen may, by order in council, prohibit the catching of

seals by British ships in Behring's Sea, or such part thereof as is defined by the said order, during the period limited by the order.

(2) While an order in council under this act is in force—

(*a*) A person belonging to a British ship shall not kill, or take, or hunt, or attempt to kill or take, any seal within Behring's Sea during the period limited by the order; and

(*b*) A British ship shall not, nor shall any of the equipment or crew thereof, be used or employed in such killing, taking, hunting, or attempt.

(3) If there is any contravention of this act, any person committing, procuring, aiding, or abetting such contravention shall be guilty of a misdemeanor within the meaning of the merchant shipping act, 1854, and the ship and her equipment and everything on board thereof shall be forfeited to Her Majesty as if an offense had been committed under section 103 of the said act, and the provisions of sections 103 and 104 and part 10 of the said act (which are set out in the schedule to this act) shall apply as if they were herein reënacted and in terms made applicable to an offense and forfeiture under this act.

(4) Any commissioned officer on full pay in the naval service of Her Majesty shall have power, during the period limited by the order, to stop and examine any British ship in Behring's Sea, and to detain her, or any portion of her equipment, or any of her crew, if in his judgment the ship is being or is preparing to be used or employed in contravention of this section.

(5) If a British ship is found within Behring's Sea having on board thereof fishing or shooting implements or seal skins or bodies of seals, it shall lie on the owner or master of such ship to prove that the ship was not used or employed in contravention of this act.

2. (1) Her Majesty the Queen in council may make, revoke, and alter orders for the purposes of this act, and every such order shall be forthwith laid before both houses of Parliament and published in the London Gazette.

(2) Any such order may contain any limitations, conditions, qualifications, and exceptions which appear to Her Majesty in council expedient for carrying into effect the object of this act.

3. (1) This act shall apply to the animal known as the fur seal, and to any marine animal specified in that behalf by an order in council under this act, and the expression "seal" in this act shall be construed accordingly.

(2) The expression "Behring's Sea" in this act means the seas known as Behring's Sea within the limits described in an order under this act.

(3) The expression "equipment" in this act includes any boat, tackle, fishing, or shooting instruments, and other things belonging to the ship.

(4) This act may be cited as the seal fishery (Behring's Sea) act, 1891.

SCHEDULE.

ENACTMENTS OF MERCHANT SHIPPING ACT (17 AND 18 VICT., C. 104) APPLIED.

SECTION 103. * * * And in order that the above provisions as to forfeitures may be carried into effect, it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any British officer of customs, or any British consular officer, to seize and detain any ship which has, either wholly or as to any share therein, become subject to forfeiture as aforesaid, and to bring her for adjudication before the high court of admiralty in England or Ireland, or any court having admiralty jurisdiction in Her Majesty's dominions; and such court may thereupon make such order in the case as it may think fit, and may award to the officer bringing in the same for adjudication such portion of the proceeds of the sale of any forfeited ship or share as it may think right.

SEC. 104. No such officer as aforesaid shall be responsible, either civilly or criminally, to any person whomsoever, in respect of the seizure or detention of any ship that has been seized or detained by him in pursuance of the provisions herein contained, notwithstanding that such ship is not brought in for adjudication, or, if so brought in, is declared not to be liable to forfeiture, if it is shown to the satisfaction of the judge or court before whom any trial relating to such ship or such seizure or detention is held that there were reasonable grounds for such seizure or detention; but if no such grounds are shown, such judge or court may award payment of costs and damages to any party aggrieved, and make such other order in the premises as it thinks just.

PART X.—LEGAL PROCEDURE.

Application.

SECTION 517. The tenth part of this act shall in all cases, where no particular country is mentioned, apply to the whole of Her Majesty's dominions.

Legal procedure (general).

SECTION 518. In all places within Her Majesty's dominions, except Scotland, the offenses hereinafter mentioned shall be punished and penalties recovered in manner following, that is to say:

(1) Every offense by this act declared to be a misdemeanor shall be punishable by fine or imprisonment with or without hard labor, and the court before which such offense is tried may in England make the same allowances and order payment of the same costs and expenses as if such misdemeanor had been enumerated in the act passed in the seventh year of his late Majesty King George the Fourth, chapter 64, or any other act that may be passed for the like purpose, and may in any other part of Her Majesty's dominions make such allowances and order payment of such costs and expenses (if any) as are payable or allowable upon the trial of any misdemeanor under any existing act or ordinance or as may be payable or allowable under any act or law for the time being in force therein.

(2) Every offense declared by this act to be a misdemeanor shall also be deemed to be an offense hereby made punishable by imprisonment for any period not exceeding 6 months, with or without hard labor, or by a penalty not exceeding £100, and may be prosecuted accordingly in a summary manner, instead of being prosecuted as a misdemeanor.

(3) Every offense hereby made punishable by imprisonment for any period not exceeding 6 months, with or without hard labor, or by any penalty not exceeding £100, shall in England and Ireland be prosecuted summarily before any two or more justices, as to England in the manner directed by the act of the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter 43, and as to Ireland in the manner directed by the act of the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter 93, or in such other manner as may be directed by any act or acts that may be passed for like purposes. And all provisions contained in the said acts shall be applicable to such prosecutions in the same manner as if the offenses in respect of which the same are instituted were hereby stated to be offenses in respect of which two or more justices have power to convict summarily or to make a summary order.

(4) In all cases of summary convictions in England, where the sum adjudged to be paid exceeds £5, or the period of imprisonment adjudged exceeds 1 month, any person who thinks himself aggrieved by such conviction may appeal to the next court of general or quarter sessions.

(5) All offenses under this act shall in any British possession be punisahble in any court or by any justice of the peace or magistrate in which or by whom offenses of a like character are ordinarily punishable, or in such other manner, or by such other courts, justices, or magistrates, as may from time to time be determined by any act or ordinance duly made in such possession in such manner as acts and ordinances in such possession are required to be made in order to have the force of law.

SEC. 519. Any stipendiary magistrate shall have full power to do alone whatever two justices of the peace are by this act authorized to do.

SEC. 520. For the purpose of giving jurisdiction under this act, every offense shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose or in any place in which the offender or person complained against may be.

SEC. 521. In all cases where any district within which any court of justice of the peace or other magistrate has jurisdiction, either under this act or under any other act or at common law, for any purpose whatever, is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such court, justice of the peace, or magistrate shall have jurisdiction over any ship or boat being on or lying or passing off such coast, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat or for the time being belonging thereto, in the same manner as if such ship, boat, or persons were within the limits of the original jurisdiction of such court, justice, or magistrate.

SEC. 522. Service of any summons or other matter in any legal proceeding under this act shall be good service if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any ship

to which he may belong with the person being or appearing to be in command or charge of such ship.

SEC. 523. In all cases where any court, justice or justices of the peace, or other magistrate, has or have power to make an order directing payment to be made of any seaman's wages, penalties, or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed in the order, the court, justice or justices, or other magistrate who made the order, may, in addition to any other powers they or he may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or poinding and sale of the said ship, her tackle, furniture, and apparel.

SEC. 524. Any court, justice, or magistrate imposing any penalty under this act for which no specific application is herein provided may, if it or he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such penalty is imposed, or to be applied in or towards payment of the expenses of the proceedings; and, subject to such directions or specific application as aforesaid, all penalties recovered in the United Kingdom shall be paid into the receipt of Her Majesty's exchequer in such manner as the treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom; and all penalties recovered in any British possession shall be paid over into the public treasury of such possession, and form part of the public revenue thereof.

SEC. 525. The time for instituting summary proceedings under this act shall be limited as follows, that is to say:

(1) No conviction for any offense shall be made under this act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within 6 months after the commission of the offense; or, if both or either of the parties to such proceeding happen during such time to be out of the United Kingdom, unless the same is commenced within 2 months after they both first happen to arrive or to be at one time within the same.

(2) No conviction for any offense shall be made under this act in any proceeding instituted in any British possession, unless such proceeding is commenced within 6 months after the commission of the offense; or, if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any court capable of dealing with the case, unless the same is commenced within 2 months after they both first happen to arrive or to be at one time within such jurisdiction.

(3) No order for the payment of money shall be made under this act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within 6 months after the cause of complaint arises; or, if both or either of the parties happen during such time to be out of the United Kingdom, unless the same is commenced within 6 months after they both first happen to arrive or to be at one time within the same.

(4) No order for the payment of money shall be made under this act in any summary proceeding instituted in any British possession, unless such proceeding is commenced within 6 months after the cause of complaint arises; or, if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any court capable of dealing with the case, unless the same is commenced within 6 months after they both first happen to arrive or be at one time within such jurisdiction.

And no provision contained in any other act or acts, ordinance or ordinances, for limiting the time within which summary proceedings may be instituted shall affect any summary proceeding under this act.

SEC. 526. Any document required by this act to be executed in the presence of or to be attested by any witness or witnesses may be proved by the evidence of any person who is able to bear witness to the requisite facts, without calling the attesting witness or witnesses or any of them.

SEC. 527. Whenever any injury has, in any part of the world, been caused to any property belonging to Her Majesty or to any of Her Majesty's subjects by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom or within 3 miles of the coast thereof, it shall be lawful for the judge of any court of record in the United Kingdom, or for the judge of the high court of admiralty, or in Scotland the court of session, or the sheriff of the county within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master of mariners of such ship, to issue an order directed to any officer of customs or other officer named by such judge, requiring him to detain such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such injury, or has given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of such injury, and to pay all costs and damages that may be awarded

thereon; and any officer of customs or other officer to whom such order is directed shall detain such ship accordingly.

SEC. 528. In any case where it appears that before any application can be made under the foregoing section such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any British officer of customs, or any British consular officer to detain such ship until such time as will allow such application to be made and the result thereof to be communicated to him; and no such officer shall be liable for any costs or damages in respect of such detention unless the same is proved to have been made without reasonable grounds.

SEC. 529. In any action, suit, or other proceeding in relation to such injury, the person so giving security as aforesaid shall be made defendant or defender, and shall be stated to be the owner of the ship that has occasioned such damage; and the production of the order of the judge made in relation to such security shall be conclusive evidence of the liability of such defendant or defender to such action, suit, or other proceeding.

Legal procedure (Scotland).

SEC. 530. In Scotland every offense which by this act is described as a felony or misdemeanor may be prosecuted by indictment or criminal letters at the instance of Her Majesty's advocate before the high court of justiciary, or by criminal libel at the instance of the procurator fiscal of the county before the sheriff, and shall be punishable with fine and with imprisonment, with or without hard labor, in default of payment, or with imprisonment, with or without hard labor, or with both, as the court may think fit, or in the case of felony with penal servitude, where the court is competent thereto; and such court may also, if it think fit, order payment by the offender of the costs and expenses of the prosecution.

SEC. 531. In Scotland, all prosecutions, complaints, actions, or proceedings under this act, other than prosecutions for felonies or misdemeanors, may be brought in a summary form before the sheriff of the county, or before any two justices of the peace of the county or burgh where the cause of such prosecution or action arises, or where the offender or defender may be for the time, and when of a criminal nature or for penalties, at the instance of the procurator fiscal of court, or at the instance of any party aggrieved, with concurrence of the procurator fiscal of court; and the court may, if it think fit, order payment by the offender or defender of the costs of prosecution or action.

SEC. 532. In Scotland all prosecutions, complaints, actions, or other proceedings under this act may be brought either in a written or printed form, or partly written and partly printed, and where such proceedings are brought in a summary form it shall not be necessary in the complaint to recite or set forth the clause or clauses of the act on which such proceeding is founded, but it shall be sufficient to specify or refer to such clause or clauses, and to set forth shortly the cause of complaint or action and the remedy sought; and when such complaint or action is brought in whole or in part for the enforcement of a pecuniary debt or demand the complaint may contain a prayer for warrant to arrest upon the dependence.

SEC. 533. In Scotland, on any complaint or other proceeding brought in a summary form under this act being presented to the sheriff clerk or clerk of the peace, he shall grant warrant to cite the defender to appear personally before the said sheriff or justices of the peace on a day fixed, and at the same time shall appoint a copy of the same to be delivered to him by a sheriff officer or constable, as the case may be, along with the citation; and such deliverance shall also contain a warrant for citing witnesses and havers to compear at the same time and place to give evidence and produce such writs as may be specified in their citation; and where such warrant has been prayed for in the complaint or other proceeding, the deliverance of the sheriff clerk or clerk of the peace shall also contain warrant to arrest upon the dependence in common form: *Provided always*, That where the apprehension of any party, with or without a warrant, is authorized by this act, such party may be detained in custody until he can be brought at the earliest opportunity before any two justices, or the sheriff who may have jurisdiction in the place, to be dealt with as this act directs, and no citation or inducie shall in such case be necessary.

SEC. 534. When it becomes necessary to execute such arrestment on the dependence against goods or effects of the defender within Scotland, but not locally situated within the jurisdiction of the sheriff or justices of the peace by whom the warrant to arrest has been granted, it shall be competent to carry the warrant into execution on its being indorsed by the sheriff clerk or clerk of the peace of the county or burgh respectively within which such warrant comes to be executed.

SEC. 535. In all proceedings under this act in Scotland the sheriff or justices of the peace shall have the same power of compelling attendance of witnesses and havers as in cases falling under their ordinary jurisdiction.

SEC. 536. The whole procedure in cases brought in a summary form before the sheriff or justices of the peace in Scotland shall be conducted *viva voce*, without written pleadings, and without taking down the evidence in writing, and no record shall be kept of the proceedings other than the complaint and the sentence or decree pronounced thereon.

SEC. 537. It shall be in the power of the sheriff or justices of the peace in Scotland to adjourn the proceedings from time to time to any day or days to be fixed by them, in the event of absence of witnesses or of any other cause which shall appear to them to render such adjournment necessary.

SEC. 538. In Scotland all sentences and decrees to be pronounced by the sheriff or justices of peace upon such summary complaints shall be in writing; and where there is a decree for payment of any sum or sums of money against a defender, such decree shall contain warrant for arrestment, poinding, or imprisonment in default of payment, such arrestment, poinding, or imprisonment to be carried into effect by sheriffs' officers or constables, as the case may be, in the same manner as in cases arising under the ordinary jurisdiction in the sheriff or justices: Provided always, That nothing herein contained shall be taken or construed to repeal or affect an act of the fifth and sixth years of William the Fourth, intituled "An act for abolishing, in Scotland, imprisonment for civil debts of small amount."

SEC. 539. In all summary complaints any proceedings for recovery of any penalty or sum of money in Scotland, if a defender who has been duly cited shall not appear at the time and place required by the citation, he shall be held as confessed, and sentence or decree shall be pronounced against him in terms of the complaint, with such costs and expenses as to the court shall seem fit: Provided always, that he shall be entitled to obtain himself reponed against any such decree at any time before the same be fully implemented, by lodging with the clerk of court a reponing note, and consigning in his hands the sum decerned for, and the costs which had been awarded by the court, and on the same day delivering or transmitting through the post to the pursuer or his agent a copy of such reponing note; and a certificate by the clerk of court of such note having been lodged shall operate as a sist of diligence till the cause shall have been reheard and finally disposed of, which shall be on the next sitting of the court, or on any day to which the court shall then adjourn it.

SEC. 540. In all summary complaints or other proceedings not brought for the recovery of any penalty or sum of money in Scotland, if a defender, being duly cited, shall fail to appear, the sheriff or justices may grant warrant to apprehend and bring him before the court.

SEC. 541. In all cases where sentences or decrees of the sheriff or justices require to be enforced within Scotland, but beyond the jurisdiction of the sheriff or justices by whom such sentences or decrees have been pronounced, it shall be competent to carry the same into execution upon the same being indorsed by the sheriff clerk or clerk of the peace of the county or burgh within which such execution is to take place.

SEC. 542. No order, decree, or sentence pronounced by any sheriff or justice of the peace in Scotland under the authority of this act shall be quashed or vacated for any misnomer, informality, or defect of form; and all orders, decrees, and sentences so pronounced shall be final and conclusive, and not subject to suspension, advocation, reduction, or to any form of review or stay of execution, except on the ground of corruption or malice on the part of the sheriff or justices, in which case the suspension, advocation, or reduction must be brought within fourteen days of the date of the order, decree, or sentence complained of: Provided always, that no stay of execution shall be competent to the effect of preventing immediate execution of such order, decree, or sentence.

SEC. 543. Such of the general provisions with respect to jurisdiction, procedure, and penalties contained in this act as are not inconsistent with the special rules hereinbefore laid down for the conduct of legal proceedings and the recovery of penalties in Scotland, shall, so far as the same are applicable, extend to such last-mentioned proceedings and penalties: *Provided, always*, that nothing in this act contained shall be held in any way to annul or restrict the common law of Scotland with regard to the prosecution or punishment of offenses at the instance or by the direction of the lord advocate, or the rights of owners or creditors in regard to enforcing a judicial sale of any ship and tackle, or to give to the high court of admiralty of England any jurisdiction in respect of salvage in Scotland which it has not heretofore had or exercised.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, July 7, 1891.

SIR: With reference to the memorandum which I left in your hands on the 23d ultimo, respecting the British instructions to naval officers in the Bering Sea, I have the honor to transmit herewith, by direction of the Marquis of Salisbury, a full note of the instructions sent to the senior British naval officer on the North Pacific station with regard to the steps to be taken to prohibit the killing of seals in certain specified portions of the Bering Sea.

I have, etc.,

JULIAN PAUNCEFOTE.

NOTE.

[Inclosure in Sir Julian Pauncefote's note.]

The instructions to the senior naval officer on the North Pacific station, after recit ing the provisions of the seal fishery (Bering Sea) act, 1891, and stating that the order in council passed thereunder applies only to that part of Bering Sea which is east of the line of demarcation thereinafter described, proceeds as follows:

"Your instructions are to proceed at once with *Nymphe* and *Pheasant* to Bering Sea and cruise to eastward of above-named line, as may be necessary, warning every ship under British colors which, in your judgment, is hunting seals or preparing to do so. If you think she is acting in ignorance of the prohibition or believes herself to be outside prohibited waters, you may let her go with warning. If a ship is found deliberately offending, confiscate all her equipment necessary for sealing and record names of ship and master for prosecution afterwards.

"If you find American vessels deliberately offending, you are authorized by convention just signed to arrest her, and you should record name of captain and vessel and proof of offense, informing American authorities. If you can, it will be your duty to coöperate with American cruisers, who will have similar orders.

"*Nymphe* and *Pheasant* to proceed at once on this duty. *Porpoise* will proceed to Iliuliuk Harbor, Ounalaska, from China, to be under command of *Nymphe*, who will give copy instructions for guidance. These vessels to remain on this service until close of fishing season.

"The line of demarcation proceeds in a course nearly southwest through Bering Strait and Bering Sea, so as to pass midway between the northwest point of the Island of St. Lawrence and the southeast point of Cape Tchukotoki to the meridian of 170° west lonitude; thence from the intersection of that meridian in a southwesterly direction, so as to pass midway between the Island of Attou and the Copper Island, of the Kormandorski couplet or group, in the North Pacific, to the meridian of 167° east longitude, so as to include in the territory conveyed the whole of the Aleutian Islands east of that meridian."

Mr. Adee to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, July 8, 1891.

SIR: I have the honor to acknowledge, with thanks, the receipt of the copies of an act of Parliament relating to the catching of seals by British ships in Bering Sea, and also of the copies of an order of Her Britannic Majesty in council on the same subject that accompanied you note of the 6th instant.

I have, etc.,

ALVEY A. ADEE,
Acting Secretary.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, July 9, 1891.

SIR: I have the honor to acknowledge the receipt of your note of the 7th instant, with accompanying copy of the instructions to Her Britannic Majesty's officers in Bering Sea, and to inform you that I have communicated a copy thereof to the American Navy Department.

I have, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, July 13, 1891.

SIR: Since the receipt of your note of the 25th ultimo, of which I transmitted a copy to the Marquis of Salisbury, I have been in telegraphic communication with his lordship respecting the two clauses (6 and 7) which, by direction of the President, you have proposed for adoption in the Bering Sea arbitration convention, and also respecting the form of agreement for carrying out the arrangement for the appointment of a joint commission to inquire into the conditions of seal life in Bering Sea.

I desire at present to confine myself to the clause proposed in your note, which deals with the question of compensation, namely, clause 7.

It is the only one which appears to me to raise any serious difficulty, and I trust that, after considering the following observations, and with a view to expediting the conclusion of this negotiation, the President will not object to the substitution of a clause in the form which I shall presently have the honor to submit.

Her Majesty's Government have no desire to exclude from the consideration of the arbitrators any claim of compensation in relation to the Bering Sea fisheries which the United States Government may believe themselves entitled to prefer consistently with the recognized principles of international law. But they are of opinion that it is inexpedient, in a case involving such important issues and presenting such novel features, to prejudge, as it were, the question of liability by declaring that compensation shall be awarded on a hypothetical state of facts. Her Majesty's Government consider that any legal liability arising out of the facts, as proved and established at the arbitration, should be as much a question for argument and decision as the facts themselves; and, in order that this should be made quite clear and that both Governments should be placed, in that respect, on the same footing, I am authorized by Lord Salisbury to submit the following clause in substitution for the seventh clause proposed by the President:

(7) Either Government may submit to the arbitrators any claim for compensation which it may desire to prefer against the other Government in respect of any losses or injuries in relation to the fur-seal fishery in Bering Sea for which such other Government may be legally liable. The arbitrators shall decide on the legality of every such claim, and, if it shall be established, they may award such compensation as, in their judgment, shall seem equitable.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, July 23, 1891.

SIR: The President directs me to say, in response to your note of the 13th instant, that he notices with pleasure the good progress toward a full agreement upon the terms of arbitration indicated by your statement that only the seventh clause as proposed by this Government appears to you "to raise any serious difficulty."

That clause was thus stated in my note of June 25:

It shall be competent to the arbitrators to award such compensation as, in their judgment, shall seem equitable to the subjects or citizens of Great Britain whose vessels may have been seized by the United States in the Bering Sea, if such seizures shall be found by the arbitrators to have been unwarranted; and it shall also be competent to the arbitrators to award to the United States such compensation as, in their judgment, shall seem equitable for any injuries resulting to the United States or to the lessees from that Government of the privilege of taking seals on the Pribilof Islands, by reason of the killing of seals in the Behring Sea by persons acting under the protection of the British flag, outside of the ordinary territorial limits, and since the 1st day of January, 1886, if such killing shall be found to have been an infraction of the rights of the United States.

The objection you made to this clause is thus stated by you:

Her Majesty's Government have no desire to exclude from the consideration of the arbitrators any claim of compensation in relation to the Bering Sea fisheries which the United States Government may believe themselves entitled to prefer consistently with the recognized principles of international law. But they are of opinion that it is inexpedient, in a case involving such important issues and presenting such novel features, to prejudge, as it were, the question of liability by declaring that compensation shall be awarded on a hypothetical state of facts. Her Majesty's Government consider that any legal liability arising out of the facts as proved and established at the arbitration should be as much a question for argument and decision as the facts themselves, and, in order that this should be made quite clear, and that both Governments should be placed, in that respect, on the same footing, etc.

The President was not prepared to anticipate this objection, in view of the fact that Lord Salisbury, in his note of February 21 last, had asked a specific submission to the arbitrators of the British claim for seizures made in the Bering Sea. His language, which was quoted in my note of June 25, was as follows:

There is one omission in these questions which I have no doubt the Government of the President will be very glad to repair, and that is the reference to the arbitrator of the question, what damages are due to the persons who have been injured, in case it shall be determined by him that the action of the United States in seizing British vessels has been without warrant in international law.

This could only be understood as a suggestion that the claims of the respective Governments should be stated and given a specific reference. And so, in the seventh clause proposed, the claim of Great Britain for seizures made is defined and referred to in terms so correspondent to the request of Lord Salisbury that it can not be supposed objection would have been made to it if it had stood alone. But a particular statement of the British claim for compensation certainly made proper and even necessary a like statement of the claims of the United States, and the President is not able to see that the reference proposed was in any respect unequal. If it should be found by the arbitrators that the United States had, without right, seized British vessels in the Bering Sea, the arbitrators were authorized to give compensation; and if, on the other hand, these and other British vessels were found to have visited that sea and to have killed seals therein in violation of the rights of the United States and to the injury of its property interests, the arbitrators were authorized to give compensation. One is not more

subject to the objection that it presents a hypothetical state of facts than the other, and both submit the question of the lawfulness or unlawfulness of the acts complained of.

The President believes that Her Majesty's Government may justly be held responsible, under the attendant circumstances, for injuries done to the jurisdictional or property rights of the United States by the sealing vessels flying the British flag, at least since the date when the right of these vessels to invade the Bering Sea and to pursue therein the business of pelagic sealing was made the subject of diplomatic intervention by Lord Salisbury. In his opinion justice requires that Her Majesty's Government should respond for the injuries done by those vessels, if their acts are found to have been wrongful, as fully as if each had borne a commission from that Government to do the acts complained of. The presence of the master or even of a third person, under circumstances calculated and intended to give encouragement, creates a liability for trespass at the common law, and much more if his presence is accompanied with declarations of right, protests against the defense which the owner is endeavoring to make, and a declared purpose to aid the trespassers if they are resisted. The justice of this rule is so apparent that it is not seen how in the less technical tribunal of an international arbitration it could be held to be inapplicable.

The United States might well insist that Her Majesty's Government should admit responsibility for the acts of the Canadian sealers, which it has so directly encouraged and promoted, precisely as in the proposal the United States admits responsibility for the acts of its revenue vessels. But, with a view to remove what seems to be the last point of difference in a discussion which has been very much protracted, the President is willing to modify his proposal and directs me to offer the following:

The Government of Great Britain having presented the claims of its subjects for compensation for the seizure of their vessels by the United States in Bering Sea and the Government of the United States having presented on its own behalf, as well as of the lessees of the privilege of taking seals on the Pribilof Islands, claims for compensation by reason of the killing of seals in the Bering Sea by persons acting under the protection of the British flag, the arbitrators shall consider and decide upon such claims in accordance with justice and equity and the respective rights of the high contracting parties, and it shall be competent for the arbitrators to award such compensation as, in their judgment, shall seem equitable.

The President thinks that a particular statement of the claims of the respective Governments is more likely to lead to a satisfactory result than the general reference proposed by you. It is believed that the form of reference now proposed by him removes the objections urged by you to his former proposal.

I have, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Newport, R. I., August 8, 1891.

SIR: On the 23d of June last I had the honor to place in your hands a memorandum embodying the substance of the instructions issued to British cruisers in Bering Sea in pursuance of the *modus vivendi* signed on the 15th of that month. The memorandum also contained a proposal

for an agreement between the Government of Great Britain and of the United States for mutual indemnities in respect of acts committed by the cruisers of one nation against the vessels of the other in execution of the *modus vivendi*.

To that proposal I have not as yet been favored with a reply, and I should be extremely obliged if you would be good enough to inform me at your earliest convenience of the views of your Government with respect to the suggested agreement.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, August 17, 1891.

SIR: I have the honor to acknowledge the receipt of your note of the 8th instant, in which you refer to a memorandum of June 23, left with me June 24, in which you submitted a proposal for an agreement between the Governments of Great Britain and the United States for mutual indemnities in respect of acts committed by the cruisers of one nation against the vessels of the other in execution of the *modus vivendi*.

The President desires me to say in reply that it seems to him to be quite unnatural that the two Governments, having come to a friendly understanding as to a *modus vivendi* and the method of its enforcement, should anticipate or attempt to provide against possible breaches or violations of duty by the vessels of either country. It will be time enough, in the President's opinion, when either Government lodges against the other a complaint in this regard, to consider the question of indemnity. The President desires me to state that he hopes that no such question may arise, but that he will be prepared to meet it in a friendly spirit if, unfortunately, differences should develop.

I have, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, August 22, 1891.

SIR: Referring to my note to you of the 23d ultimo, relative to the proposed ageement of arbitration of certain matters affecting the seal fisheries in Bering Sea, I would be extremely obliged if you would be kind enough to inform me when an answer to the same may be expected.

I have, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Newport, August 24, 1891.

SIR: I have the honor to acknowledge the receipt of your note of the 22d instant, in which you ask me to inform you when you may expect an answer to your note of the 23d ultimo, relative to the proposed agreement of arbitration of certain matters affecting the seal fisheries in Bering Sea.

I very much regret that I have not yet been in a position to reply to the note in question, but I hope to be able to do so in the course of the next few days.

I have, etc.,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Wharton.

[Telegram.]

NEWPORT, R. I., *August 26, 1891.*

Your note of 22d. Important letter posted to-day.

PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Wharton.

[Private and unofficial.]

BRITISH LEGATION,
Newport, R. I., August 26, 1891.

DEAR MR. WHARTON: In my reply to your official note of the 22d instant I stated that I hoped to be able to send an answer to your note of the 23d ultimo in a few days.

Before doing so, however, I am anxious to explain to you privately and unofficially by letter, as I would do verbally were I in Washington, the objection which my Government entertain to the latest form of clause relating to compensation which has been proposed by the President for adoption as article 7 in the Bering Sea arbitration agreement. Such a private and unofficial exchange of views at this point of the negotiations may abridge the official correspondence and facilitate a solution of the present difficulty, on the basis of a suggestion which you made when we discussed the questions informally at Washington.

My Government are unable to accept the form of clause proposed by the President because it appears to them, taken in connection with your note of the 23d ultimo, to imply an admission on their part of a doctrine respecting the liability of governments for the acts of their nationals or other persons sailing under their flag on the high seas which is not warranted by international law and to which they can not subscribe.

I need hardly say that the discussion of such a point (which, after all, may never arise) must prolong the negotiation indefinitely. Moreover, it seems premature to enter into such a discussion before the other questions to be submitted to the arbitrators have been determined and all the facts on which any liability can arise have been ascertained.

Your suggestion, to which I have referred, was to leave out altogether the question of damages from the arbitration agreement, and you may remember that at the time I did not encourage the idea, not apprehending that the clause would give rise to such protracted discussion, and being, moreover, anxious that the settlement to be arrived at should embrace and finally dispose of every point in controversy.

There is a middle course, however, which appears to me to commend itself, from every point of view, as a practical and logical solution of the present difficulty. It is to omit the seventh clause, as to compensation, and to insert in its place a clause referring to the arbitrators any question of fact which either Government may put to them with reference to the claims for compensation it believes itself to possess. The application of the facts to international law might be a matter for negotiation after they are determined, and, if the two Governments agree, might be referred, in whole or in part, to the arbitrators. The clause might be worded as follows:

CLAUSE 7. Either of the two Governments may submit to the arbitrators any question of fact which it may wish to put before them in reference to the claims for compensation which it believes itself or its nationals to possess against the other.

The question whether or not, and to what extent, those facts, as determined by the arbitrators and taken in connection with their decision upon the other questions submitted to them, render such claims valid according to the principles of international law shall be a matter of subsequent negotiations, and may, if the two powers agree, be referred, in whole or in part, to the arbitrators.

I do not, of course, propose the above wording as definitive. It should be open to amendment on either side. But if, after submitting it to the President, you should be able to inform me privately that such a clause, under the circumstances, would be acceptable to your Government, I would then address you officially in reply to your note of the 23d ultimo and formally make the above proposal, stating the grounds on which it is based. Hoping that this mode of settlement of the last point in dispute will meet with your approval, and that this effort on my part to bring the negotiation at once to a satisfactory termination may be successful,

I remain, etc.,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Newport, August 26, 1891.

SIR: In accordance with instructions which I have received from Her Majesty's principal secretary of state for foreign affairs, I have the honor to inform you that the British Bering Sea commissioners have reported, in a communication dated Seal Island, August 5, that they find that this year's catch of seals already materially exceeds 7,500, and that the United States agent permits the killing of seals to continue, assuming that the limitation agreed upon commences from the date of the signature of the *modus vivendi*.

In bringing this information to your notice I am at the same time instructed to express the conviction of Her Majesty's Government that the President will not countenance any evasion of the true spirit of this agreement, and that he will take whatever measures appear to him to be necessary to insure its strict observance.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, September 2, 1891.

SIR: I have the honor to acknowledge the receipt of your note of the 26th ultimo, complaining that the United States agent at the Seal Islands is violating the agreement of June 15, 1891, by permitting the killing of a larger number of seals than is stipulated thereunder.

Your statement shall receive the immediate attention of this Government.

Meanwhile, I have, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Mr. Wharton to Sir Julian Pauncefote.

[Private and unofficial.]

DEPARTMENT OF STATE,
Washington, September 7, 1891.

MY DEAR SIR JULIAN: Your private and unofficial note of August 26 was duly received, and I desire now to reply to it in the same private and unofficial manner. The President is unable to see how the damage clause last proposed by him can be held to imply an admission on the part of Great Britain "of a doctrine respecting the liability of governments for the acts of their nationals or other persons sailing under their flag on the high seas, which is not warranted by international law." The proposition was expressly framed so as to submit to the arbitrators the question of the liability of Great Britain for the acts of vessels sailing under its flag. It did not assume a liability, but was framed expressly to avoid this objection, which had been urged against the previous proposal. I quote from my note of July 23:

> The United States might well insist that Her Majesty's Government should admit responsibility for the acts of the Canadian sealers, which it has so directly encouraged and promoted, precisely as in the proposal the United States admits responsibility for the acts of the revenue vessels. But, with a view to remove what seems to be the last point of difference in a discussion which has been very much protracted, the President is willing to modify his proposal and directs me to offer the following:

The claim of the United States was stated in my note of July 23, accompanying the proposal, and the President does not see how the claims of the respective governments could be more fairly or fully submitted. This Government proposes to submit to the arbitrators the question whether Great Britain is liable for the injury done to the seal fisheries, the property of the United States, by the Canadian vessels that have, under the stimulation and support of the British Government, been for several years engaged in the Bering Sea. The proposal of this Government was that the arbitrators should consider and decide such claims in accordance with justice and equity and the respective rights of the high contracting parties.

The President is unable to accept the last suggestion which you make in your note, as it seems to him to be entirely ineffectual. The facts connected with the seizure of Canadian sealers by the revenue vessels of the United States, on the one hand, and with the invasion

of the sea and the taking of seals by the Canadian sealers on the other, are well known, and doubtless could be agreed upon by the respective governments without difficulty. It is over the question of liability to respond in damages for these acts that the controversy exists, and the President can see no other course for this Government than to insist upon the submission of the question of the liability of Great Britain for the acts it complains of to arbitrators. This Government does not insist that Great Britain shall admit any liability for the acts complained of, but it may well insist, if this arbitration is to result in any effectual settlement of the differences between the two governments, that the question of Great Britain's liability shall go to the arbitrators for decision.

If you have any suggestions to make in support of the objection that the proposal made by the President assumes a liability on the part of Great Britain, the President will be very glad to receive them, and, if necessary, to reconsider the phraseology; but, upon a careful and critical examination of the proposition, he is unable to see that the objection now made has any support in the terms of the proposal.

I am, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, October 10, 1891.

SIR: It is a source of regret that an answer has been so long delayed to your note of August 26 last, relating to the communication of the British Bering Sea commissioners as to the alleged killing of seals on the seal islands in excess of the number fixed by the agreement of June 15 last. This delay has been occasioned by the necessity of receiving from the United States agent in charge of the islands a full report on the subject.

The agent reports that he reached the islands on the 10th day of June, 1891; that from the 1st of January to the 1st of May, 1891, no seals were killed on the islands; and that from May 1 to June 10, the date of the agent's arrival, there were killed by the natives for food 1,651 seals. On the morning of June 11 the agent gave permission to the lessees to commence killing under the contract with the Government of the United States, and he states that from the 11th to the 15th of June 2,920 seals were killed; and that from June 15 to July 2, the date of the arrival of the steamer *Corwin* bringing the proclamation of the President of the United States containing the notice and text of the *modus vivendi*, there were killed 4,471 seals. From July 2 to August 10 there were killed for the use of the natives as food 1,796 seals, and, on leaving the islands, the agent gave instructions to limit the number to be killed by the natives for food up to May 1, 1892, to 1,233.

The instructions of the Secretary of the Treasury to the agent, received by the steamer *Corwin*, were that if in any way his previous instructions were inconsistent with the President's proclamation and the agreement embraced in it he should be governed by the latter. The agent reports that, after careful consideration of the text of the agreement, he decided that the seals killed since June 15, the date when that

instrument was signed, should be deducted from the 7,500 named in article 2, thus leaving 3,029 seals to be taken "for the subsistence and care of the natives" from July 2, 1891, to May 1, 1892. He says that, in his desire to carry out with absolute correctness the *modus vivendi*, he consulted the two United States commissioners (Messrs. Mendenhall and Merriam), the commanders of the United States vessels *Mohican*, *Thetis*, and *Corwin*, the United States special agent, and the special inspector, and that they all concurred in his interpretation of paragraph 2 of the agreement, that seals killed prior to June 15 did not form part of the 7,500 named in the *modus vivendi*. He further says that in his first meeting with the British commissioners, Sir George Baden-Powell and Dr. G. M. Dawson, July 28, he submitted the same question to them. Their reply was that it was the understanding of the British Government that only 7,500 seals should be taken during the season; but, on examining the text of the agreement, they admitted that the agent's interpretation of it was correct. This statement as to the views of the British commissioners is confirmed by the report of Prof. Mendenhall.

The agent claims that his action is not only strictly in accord with the language of the agreement, but with the true intent and spirit of the same, as he understood that intent and spirit in the light of all the facts in his possession. He understood that the object of the agreement in allowing 7,500 seals to be killed was "for the subsistence and care of the natives." The 1,651 seals killed by the natives for food from May 1 to June 10 were almost immediately eaten by them, as is their custom after the scanty supply of meat during the winter and spring months, and no part of these seals was salted or preserved for future use. During the killing season by the lessees under their quota for commercial purposes the natives are kept very busy and have no time to prepare meat for future use, and only so much is used for food as is cut off for present use; so that the seals killed between June 10, when the season commenced, and July 2, when the notice of the *modus vivendi* was received, were not available for the future subsistence of the natives. As stated, there only remained 3,029 seals to be taken for their subsistence from July 2, 1891, to May 1, 1892. The agent cites the fact that from the close of the commercial killing season of 1890, on July 20, there were killed by the natives for food up to December 31, 1890, 6,218 seals, including 3,468 pup seals, the further killing of the latter being now prohibited. It was plain to the agent that, under the construction which he had placed upon the *modus vivendi*, the supply of meat for the natives during the coming winter would be entirely inadequate, and before his departure from the islands he called upon the lessees to bring in a sufficient supply of salt beef to carry the natives through the winter and up to May 1, 1892.

The agent had no means of determining the scope and meaning of the phrase of the British commissioners, as used in your note, "this year's catch," or "the catch of this season," as used in their communication to him dated July 30, except by the interpretation to be given to the text of the *modus vivendi*, as contained in paragraphs 1 and 2. The "same period," found in paragraph 2, he understood to refer to the period within which the British Government undertook to prohibit seal-killing in Bering Sea. The British commissioners informed the agent that, as to the British Government, this period did not begin until a reasonable time after June 15 (the date of signing) sufficient for the naval vessels to reach the sea. The agent interpreted the paragraphs cited as mutually binding, and he could not assume that it

would be claimed that their provisions were to take effect on one date in the interest of the British sealers and on another in the interest of the United States.

I have thus taken pains to communicate to you in some detail the action of the agent of the United States on the subject complained of by the British commissioners, and I hope what has been set forth will convince your Government that there has been no disposition on the part of the agent to evade or violate the stipulations of the agreement of June 15 last.

I have, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, October 12, 1891.

MY DEAR SIR JULIAN: On July 23 last I wrote you a note presenting a proposal for the settlement of claims for damages which was to form a part of the proposed agreement of arbitration of certain matters affecting the seal fisheries in Bering Sea. On August 22 I wrote requesting you to be kind enough to inform me when an answer to my note might be expected. On August 24 you wrote me acknowledging the receipt of mine of August 22 and expressing the hope that you would be in a position to reply to my note of July 23 in the course of the next few days. More than ten weeks have elapsed since sending you my note of July 23, and no answer to it has yet been received. The President is very desirous to have a conclusion reached in the negotiations concerning the Bering Sea matters, and has requested me to draw your attention again to the importance of an early reply to his latest proposal. The period fixed by the agreement for a *modus vivendi* expires May 2 next. The time within which it is hoped to obtain a final settlement of the questions in dispute between the two Governments is fast going by, and the President feels that, if any effective action is to be had in the matter before the next fishing season opens, all the terms of agreement of arbitration should be disposed of immediately.

Very truly yours,

WILLIAM F. WHARTON,
Acting Secretary.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, October 13, 1891.

MY DEAR MR. WHARTON: On receipt of your letter of yesterday, asking for a reply to your note of July 23 last, containing a form of clause proposed by your Government to be inserted in the Bering Sea arbitration agreement to settle the long-debated question of damages, I telegraphed to Lord Salisbury for further instructions, informing him of the substance of your communication.

I understand that his lordship is expected in London this week from the south of Europe, and I shall probably therefore receive an answer to my telegram before many days.

Although, as you observe, more than ten weeks have elapsed since the date of your official note above referred to, I need hardly remind you that the intervening time has been taken up with informal discussions between us with a view to finding a solution of the difficulty without unduly lengthening the official correspondence. This informal interchange of views, which, no doubt had the approval of the President, has not been without advantage in throwing light on the troublesome question which still impedes the conclusion of the agreement, and I now hope I may soon be in a position to resume the official correspondence.

Very truly yours,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, October 17, 1891.

SIR: Immediately on the receipt of your note of the 23d of July last, relative to the form of compensation clause to be inserted in the Bering Sea arbitration agreement, I transmitted a copy of it to the Marquis of Salisbury.

Since then I have been in correspondence with his lordship respecting the new form of clause on that subject proposed in your note as article 7.

I regret to inform you that Her Majesty's Government, after the fullest consideration, have arrived at the conclusion that this new clause could not properly be assented to by them. In their opinion it implies an admission of a doctrine respecting the liability of governments for the acts of their nationals or other persons sailing under their flag on the high seas, for which there is no warrant in the law of nations. Thus it contains the following words:

> The Government of the United States having presented on its own behalf, as well as of the lessees of the privilege of taking seals on the Pribilof Islands claims for compensation by reason of the killing of seals in Bering Sea by persons acting under the protection of the British flag, the arbitrators shall consider and decide upon such claims, etc.

These words involve the proposition that Her Majesty's Government are liable to make good losses resulting from the wrongful action of persons sailing outside their jurisdiction under the British flag.

Her Majesty's Government could not accept such a doctrine. The article dealing with the question of compensation is therefore likely to give occasion for lengthy negotiations, which must retard indefinitely the decision of the main questions of law, on which the validity of the claims of either Government entirely depends.

Both Governments being equally desirous to find a prompt solution of the difficulty which now impedes the conclusion of the arbitration agreement, Lord Salisbury has authorized me to make the following proposal: His lordship suggests that the six articles of the arbitration agreement already accepted by both Governments should be signed now, and also an article providing for the reference to the arbitrators of any question of fact which either Government may desire to submit to them regarding the claims for compensation to which it considers itself to be entitled. The application of international law to those facts *would* be left as a matter for future negotiation after they shall have

been ascertained, and might be subsequently referred to the arbitrators, in whole or in part, if the two Governments should agree to do so.

The above proposal presents so logical and practical an issue out of the difficulty that I can not but think that it will commend itself to the favorable consideration of the President, and I hope it will meet with his acceptance.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, October 22, 1891.

SIR: I have laid before the President your note of the 17th instant, and he directs me to express his regret that your Government has not seen fit to accept the modified form of the seventh clause which was proposed in my note of July 23 last.

This modification of the clause in question was made with a view to obviate the objection urged in your note of July 13, and the President is unable to see how it can be held to imply an admission on the part of Great Britain "of a doctrine respecting the liability of governments for the acts of their nationals or other persons sailing under their flag on the high seas, for which there is no warrant in international law." The proposition was expressly framed so as to submit to the arbitrators the question of the liability of each Government for specified acts complained of by the other, and its lang age no more implies an admission of liability on the part of one Government than on the part of the other. It is precisely because the two Governments can not agree as to the question of liability that arbitration becomes necessary.

The facts upon which the respective claims for compensation rest are not seriously in dispute, to wit, the seizure of vessels and the killing of seals in Behring Sea, and it would probably not require the aid of arbitrators for their ascertainment. But it is the more important and difficult question of liability respecting which the two Governments find it necessary to invoke the interposition of impartial arbitration. It was not the intention of this Government to require of Great Britain any admission of liability for the acts complained of, but it has felt that, if the arbitration was to result in a full settlement of the differences between the two Governments, the question of respective liability for these acts should go to the arbitrators for decision.

In the informal conferences which have taken place between us since the date of my note of July 25, you will remember that I have solicited from you any suggestions in support of the objection that the modified clause assumes a liability on the part of your Government, having in view on my part an amendment of the phraseology to overcome the objection; and I have to express disappointment that no such suggestions were found in your note of the 17th instant. It was for this reason and in the hope that the clause might be made acceptable to your Government that after the receipt of your note I submitted to you informally the following amendment to be added to the seventh clause, as proposed in my note of July 23:

The above provision for the submission to the arbitrators by the United States of claims for compensation by reason of the killing of seals by persons acting under the protection of the British flag shall not be considered as implying any admission on the part of the Government of Great Britain of its liability for the acts of its nationals or other persons sailing under its flag.

We have now been informed by you that your Government is unwilling to accept the clause even with this addition by way of amendment.

When in your note of February 21 last you communicated the desire of Lord Salisbury for a "reference to the arbitrator of the question of damages due to persons who have been injured, in case it should be determined by him that the action of the United States in seizing British vessels has been without warrant in international law," the President cheerfully accepted the suggestion, and, coupling with it the claim of damages preferred by the United States, proposed to submit both questions, as presented by the respective Governments, to arbitration, thus making a complete and final settlement of all differences between the the two Governments connected with the seal fisheries. To withdraw this comprehensive submission of specified claims and substitute for it a mere reference to the arbitrator of questions of fact touching the same claims which are not to be held binding upon either Government, as you propose, is, in the opinion of the President, an imperfect, and, he fears, may prove an ineffectual, disposition of the question of claims. But, having failed in his efforts by modification and amendment to secure the acceptance by your Government of the clause for a full adjustment of these claims, and heartily participating in the desire expressed in your note for a prompt solution of the difficulty which impedes the conclusion of the arbitration, he has thought it best to terminate the discussion by proposing to you the following, to constitute the text of clause 7:

The respective Governments having found themselves unable to agree upon a reference which shall include the question of the liability of each for the injuries alleged to have been sustained by the other or by its citizens, in connection with the claims presented and urged by it, and, being solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions, do agree that either may submit to the arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability of either Government upon the facts found to be the subject of further negotiation.

I am, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, October 23, 1891.

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date in reply to mine of the 17th instant, in which I stated the grounds on which Her Majesty's Government found themselves unable to accept the form of clause relating to damages proposed in your note of July 23 last for insertion in the Bering Sea arbitration agreement. In that note I informed you that I had been authorized by the Marquis of Salisbury, with a view to a prompt settlement of the difficulty, to make the following suggestions, namely, that—

the six articles of the arbitration agreement already accepted by both Governments should be signed now, and also an article providing for the reference to the arbitrators of any question of fact which either Government may desire to submit to them regarding the claims for compensation to which it considers itself to be entitled. The application of international law to those facts would be left as a matter for future negotiation after they shall have been ascertained, and might be subsequently referred to the arbitrators, in whole or in part, if the two Governments should *agree to* do so.

In your note under acknowledgment, in which you reply to the above suggestion, you advert to the discussions and informal conferences which have taken place on the subject of the clause dealing with the question of damages, and you state that the President is unable to see how the seventh clause proposed in your note of the 23d of July last can be held to imply an admission on the part of Great Britain "of a doctrine respecting the liability of governments for the acts of their nationals or other persons sailing under their flag on the high seas, for which there is no warrant in international law." Those are, no doubt, the terms in which I stated generally the objection of Her Majesty's Government to the form of clause in question. But I am relieved from explaining their objection in greater detail by the proposal of the President, with which your note concludes, to substitute a new clause which substantially carries out Lord Salisbury's suggestion.

You state that the President has thought it best to terminate the discussion by proposing to me the following, to constitute the text of clause 7:

The respective Governments having found themselves unable to agree upon a reference which shall include the question of the liability of each for the injuries alleged to have been sustained by the other or by its citizens, in connection with the claims presented and urged by it, and, being solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions, do agree that either may submit to the arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability of either Government upon the facts found to be the subject of further negotiation.

I am glad to be able to announce to you that I have received by telegraph the authority of Lord Salisbury to accept the above clause on behalf of Her Majesty's Government, and in doing so I beg to express my gratification at this satisfactory solution of the difficulty which has delayed the conclusion of the arbitration agreement.

I have, etc.,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, November 23, 1891.

SIR: I informed the Marquis of Salisbury of our proposal to sign the text of the seven articles to be inserted in the Behring Sea arbitration agreement and of the Joint Commission article, as settled in the diplomatic correspondence, in order to record the progress made up to the present time in the negotiation.

Lord Salisbury entirely approves of that proposal, but he has instructed me, before signing, to address a note to you for the purpose of obviating any doubts which might hereafter arise, as to the meaning and effect of article 6, which is as follows:

"If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of regulations for the proper protection and the preservation of the fur-seal in, or habitually resorting to the Behring Sea, the arbitrators shall then determine what concurrent regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such regulations should extend; and, to aid them in that determination, the report of the joint commission to be appointed by the respective Governments shall be laid before them, with such other evidence as either Government may submit. The contracting powers furthermore agree to coöperate in securing the adhesion of other powers to such regulations."

Lord Salisbury desires to make the following two reservations on the above article:

His lordship understands, first, that the necessity of any regulations is left to the arbitrators, as well as the nature of those regulations, if the necessity is in their judgment proved. Secondly, that the regulations will not become obligatory on Great Britain and the United States until they have been accepted by the other maritime powers. Otherwise, as his lordship observes, the two Governments would be simply handing over to others the right of exterminating the seals.

I have no doubt that you will have no difficulty in concurring in the above reservations, and subject thereto I shall be prepared to sign the articles as proposed.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, November 27, 1891.

SIR: In the early part of last week you furnished the exact points which had been agreed upon for arbitration in the matter of the Behring Sea negotiation. You called later and corrected the language which introduced the agreement. In fact the two copies framed were taken entirely from your minutes. It was done with a view that you and I should sign them, and thus authenticate the points for the arbitrators to consider.

You inform me now that Lord Salisbury asks to make two reservations in the sixth article. His first reservation is that "the necessity of any regulation is left to the arbitrators, as well as the nature of those regulations if the necessity is in their judgment proved."

What reason has Lord Salisbury for altering the text of the article to which he had agreed? It is to be presumed that if regulations are needed they will be made. If they are not needed the arbitrators will not make them. The agreement leaves the arbitrators free upon that point. The first reservation, therefore, has no special meaning.

The second reservation which Lord Salisbury makes is that "the regulations shall not become obligatory on Great Britain and the United States until they have been accepted by the other maritime powers." Does Lord Salisbury mean that the United States and Great Britain shall refrain from taking seals until every maritime power joins in the regulations? Or does he mean that sealing shall be resumed the 1st of May next and that we shall proceed as before the arbitration until the regulations have been accepted by the other "maritime powers?"

"Maritime powers" may mean one thing or another. Lord Salisbury did not say the *principal* maritime powers. France, Spain, Portugal, Italy, Austria, Turkey, Russia, Germany, Sweden, Holland, Belgium, are all maritime powers in the sense that they maintain a navy, great or small. In like manner Brazil, the Argentine Confederation, Chile, Peru, Mexico, and Japan are maritime powers. It would require a long time, three years at least, to get the assent of all these powers. Mr. Bayard, on the 19th of August, 1887, addressed Great Britain, Germany, France, Russia, Sweden and Norway, and Japan, with a view to securing some regulations in regard to the seals in Behring Sea. France,

Japan, and Russia replied with languid indifference. Great Britain never replied in writing. Germany did not reply at all. Sweden and Norway said the matter was of no interest to them. Thus it will be again. Such a proposition will postpone the matter indefinitely.

The President regards Lord Salisbury's second reservation, therefore, as a material change in the terms of the arbitration agreed upon by this Government; and he instructs me to say that he does not feel willing to take it into consideration. He adheres to every point of agreement which has been made between the two powers, according to the text which you furnished. He will regret if Lord Salisbury shall insist on a substantially new agreement. He sees no objection to submitting the agreement to the principal maritime powers for their assent, but he can not agree that Great Britain and the United States shall make their adjustment dependent on the action of third parties who have no direct interest in the seal fisheries or that the settlement shall be postponed until those third parties see fit to act.

I have, etc.,

JAMES G. BLAINE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, December 1, 1891.

SIR: I communicated by telegram to the Marquis of Salisbury the substance of your note of the 27th ultimo, respecting the two reservations which Her Majesty's Government desire to make in relation to the sixth clause of the proposed Behring Sea arbitration agreement, as stated in my note of the 23d ultimo, and I have now the honor to inform you that I have received a reply from his lordship to the following effect:

As regards the first reservation Lord Salisbury observes that the statement contained in your note that the clause leaves the arbitrators free to decide whether regulations are needed or not, assures the same end as the proposed reservation, which therefore becomes unnecessary and may be put aside.

With respect to the second reservation, his lordship states that it was not the intention of Her Majesty's Government to defer putting into practical execution any regulations which the arbitrators may prescribe. Its object is to prevent the fur-seal fishery in Behring Sea from being placed at the mercy of some third power. There is nothing to prevent such third power (Russia, for instance, as the most neighboring nation), if unpledged, from stepping in and securing the fishery at the very seasons and in the very places which may be closed to the sealers of Great Britain and the United States by the regulations.

Great circumspection is called for in this direction, as British and American sealers might recover their freedom and evade all regulations by simply hoisting the flag of a non-adhering power.

How is this difficulty to be met? Lord Salisbury suggests that if, after the lapse of one year from the date of the decree of regulations, it shall appear to either Government that serious injury is occasioned to the fishery from the causes above mentioned, the Government complaining may give notice of the suspension of the regulations during the ensuing year, and in such case the regulations shall be suspended until arrangements are made to remedy the complaint.

Lord Salisbury further proposes that, in case of any dispute arising between the two Governments as to the gravity of the injury caused to the fishery or as to any other fact, the question in controversy shall be referred for decision to a British and an American admiral, who, if they should be unable to agree, may select an umpire.

Lord Salisbury desires me to ascertain whether some provision of the above nature would not meet the views of your Government.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, December 2,1891.

SIR: I have attentively read your note of the 1st instant and submitted it to the President. The President is unable to see the danger which Lord Salisbury apprehends, of a third nation engaging in taking seals regardless of the agreement between Great Britain and the United States. The dispute between the two nations has now been in progress for more than five years. During all that time, while Great Britain was maintaining that the Behring Sea was open to all comers, at any time, as of right, not another European nation has engaged in sealing.

A German vessel once made its appearance in Behring Sea, but did not return, being satisfied, I suppose, that at the great distance they have to sail, the Germans could not successfully engage in sealing. Russia, whose interference Lord Salisbury seems to specially apprehend, will not dissent from the agreement, because such dissent would put to hazard her own sealing property in the Behring Sea. On the contrary, we may confidently look to Russia to sustain and strengthen whatever agreement Great Britain and the United States may conjointly ordain.

It is the judgment of the President, therefore, that the apprehension of Lord Salisbury is not well grounded. He believes that, however the arbitration between Great Britain and the United States may terminate, it will be wise for the two nations to unite in a note to the principal powers of Europe, advising them in full of what has been done and confidently asking their approval. He does not believe that, with full explanation, any attempt will be made to disturb the agreement. If, contrary to his firm belief, the agreement shall be disturbed by the interference of a third power, Great Britain and the United States can act conjointly, and they can then far better agree upon what measure may be necessary to prevent the destruction of the seals than they can at this time.

The President hopes that the arbitration between Great Britain and the United States will be allowed to proceed on the agreement regularly and promptly. It is of great consequence to both nations that the dispute be ended, and that no delay be caused by introducing new elements into the agreement to which both nations have given their consent.

I have, etc.,

JAMES G. BLAINE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, December 8, 1891. (Received December 9.)

SIR: The Marquis of Salisbury, to whom I telegraphed the contents of your letter of the 2d instant on the subject of the sixth article of the proposed Behring Sea arbitration agreement, is under the impression that the President has not rightly understood his lordship's apprehension with reference to the regulations to be made by the arbitrators under that article. His fear is not that the other powers will reject the regulations, but that they will refuse to allow the arrest by British and American cruisers of ships under their flag which may engage in the fur-seal fishery in violation of the regulations. Such refusal is highly probable in view of the jealousy which exists as to the right of search on the high seas, and the consequence must inevitably be that during the close season sealing will go on under other flags.

It can not be the intention of the two Governments, in signing the proposed agreement, to arrive at such a result.

I do not understand you to dispute that should such a state of things arise the agreement must collapse, as the two Governments could not be expected to enforce on their respective nationals regulations which are violated under foreign flags to the serious injury of the fishery.

I hope, therefore, that on further consideration the President will recognize the importance of arriving at some understanding of the kind suggested in my note of the 1st instant.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, December 10, 1891.

SIR: In reply to your note of the 8th instant, I have the following observations to make:

First. Ever since the Behring Sea question has been in dispute (now nearly six years) not one ship from France or Germany has ever engaged in sealing. This affords a strong presumption that none will engage in it in the future.

Second. A still stronger ground against their taking part is that they can not afford it. From France or Germany to Behring Sea by the sailing lines is nearly 20,000 miles, and they would have to make the voyage with a larger ship than can be profitably employed in sealing. They would have to start from home the winter preceding the sealing season and risk an unusually hazardous voyage. When they reach the fishing grounds they have no territory to which they could resort for any purpose.

Third. If we wait until we get France to agree that her ships shall be searched by American or British cruisers, we will wait until the last seal is taken in Behring Sea.

Thus much for France and Germany. Other European countries have the same disabilities. Russia, cited by Lord Salisbury as likely to embarrass the United States and England by interference, I should regard as an ally and not an enemy. Nor is it probable that any American country will loan its flag to vessels engaged in violating the Bering Sea regulations.

To stop the arbitration a whole month on a question of this character promises ill for its success. Some other less important question even than this, if it can be found, may probably be started. The effect can only be to exhaust the time allotted for arbitration. We must act mutually on what is probable, not on what is remotely possible.

The President suggests again that the proper mode of proceeding is for regulations to be agreed upon between the United States and Great Britain and then submitted to the principal maritime powers. That is an intelligent and intelligible process. To stop now to consider the regulations for outside nations is to indefinitely postpone the whole question. The President, therefore, adheres to his ground first announced that we must have the arbitration as already agreed to. He suggests to Lord Salisbury that any other process might make the arbitration impracticable within the time specified.

I have, etc.,

JAMES G. BLAINE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, December 11, 1891.

SIR: I have the honor to inform you that I telegraphed to the Marquis of Salisbury the substance of your note of yesterday respecting the sixth article of the proposed Behring Sea arbitration agreement, and that I have received a reply from his lordship to the following effect: In view of the strong opinion of the President, reiterated in your note of yesterday, that the danger apprehended by Lord Salisbury, and explained in my note of the 8th instant, is too remote to justify the delay which might be incurred by guarding against it now, his lordship will yield to the President's appeal and not press for further discussion at this stage.

Her Majesty's Government of course retain the right of raising the point when the question of framing the regulations comes before the arbitrators, and it is understood that the latter will have full discretion in the matter and may attach such conditions to the regulations as they may *a priori* judge to be necessary and just to the two powers, in view of the difficulty pointed out.

With the above observations Lord Salisbury has authorized me to sign the text of the seven articles and of the joint commission article referred to in my note of the 23 ultimo, and it will give me much pleasure to wait upon you at the State Department for that purpose at any time you may appoint.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, December 14, 1891.

SIR: I have the honor to advise you that I submitted your note of the 11th instant to the President. After mature deliberation he has instructed me to say that he objects to Lord Salisbury's making any reservation at all and that he can not yield to him the right to appeal

to the arbitrators to decide any point not embraced in the articles of arbitration. The President does not admit that Lord Salisbury can reserve the right in any way to affect the decision of the arbitrators. We understand that the arbitration is to proceed on the seven points which are contained in the articles which you and I certify were the very points agreed upon by the two Governments.

For Lord Salisbury to claim the right to submit this new point to the arbitrators is to entirely change the arbitration. The President might in like manner submit several questions to the arbitrators, and thus enlarge the subject to such an extent that it would not be the same arbitration to which we have agreed. The President claims the right to have the seven points arbitrated and respectfully insists that Lord Salisbury shall not change their meaning in any particular. The matters to be arbitrated must be distinctly understood before the arbitrators are chosen. And after an arbitration is agreed to neither of the parties can enlarge or contract its scope.

I am prepared now, as I have been heretofore, to sign the articles of agreement without any reservation whatever, and for that purpose I shall be glad to have you call at the State Department on Wednesday the 16th instant, at 11 o'clock a. m.

I have, etc.,

JAMES G. BLAINE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, December 15, 1891.

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date in reply to mine of the 11th instant, respecting the signature of the seven articles of the proposed Behring Sea arbitration agreement therein referred to.

I will transmit a copy of that reply to the Marquis of Salisbury by to-day's mail, but I beg to state that, pending his lordship's further instructions, it is not in my power to proceed to the signature of the articles in question as proposed at the close of your note.

I have, etc.,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, December 17, 1891.

SIR: I have the honor to inform you that I conveyed to the Marquis of Salisbury by telegram the substance of your note of the 14th instant respecting the sixth article of the proposed Behring Sea arbitration agreement, and that I have received a reply from his lordship in the following sense:

Lord Salisbury is afraid that, owing to the difficulties incident to telegraphic communications, he has been imperfectly understood by the President. He consented, at the President's request, to defer for the present all further discussion as to what course the two governments should follow in the event of the regulations prescribed by the arbitra-

tors being evaded by a change of flag. It was necessary that in doing so he should guard himself against the supposition that by such consent he had narrowed the rights of the contending parties or of the arbitrators under the agreement.

But in the communication which was embodied in my note of the 11th instant, his lordship made no reservation, as the President seems to think, nor was any such word used. A reservation would not be valid unless assented to by the other side, and no such assent was asked for. Lord Salisbury entirely agrees with the President in his objection to any point being submitted to the arbitrators which is not embraced in the agreement; and, in conclusion, his lordship authorizes me to sign the articles of the arbitration agreement, as proposed at the close of your note under reply, whenever you may be willing to do so.

I have, etc.,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, D. C., December 30, 1891. (Received December 30.)

DEAR MR. BLAINE: On the 22d instant I telegraphed, as you desired, to Lord Salisbury your suggestion that the number of arbitrators on the Bering Sea tribunal should be reduced from seven to five by limiting the representation of our respective Governments to one each, in view of the agreement that there should be three foreign arbitrators besides those appointed by Great Britain and the United States.

Last night I received his lordship's reply, which is to the effect that, looking at the importance and variety of the questions involved and to all the circumstances, Her Majesty's Government, after mature consideration, are not prepared to consent to being represented on the tribunal by less than two arbitrators. Lord Salisbury hopes therefore that you will be ready to proceed in accordance with the arrangement at which we arrived on the 16th ultimo, namely, that the tribunal shall consist of seven arbitrators, of whom our respective Governments shall appoint two each, and the other three shall be appointed by foreign Governments to be selected for that purpose. All seven arbitrators to be jurists of repute and the three foreign ones to understand the English language.

I remain yours very truly,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, January 16, 1892.

DEAR MR. BLAINE: I have just received a telegram to the effect that Sir G. Baden Powell leaves Liverpool this day by the *Etruria* for New York, whence he will proceed to Ottawa for a few days, and then come to Washington with Dr. Dawson. They hope to be here on the 29th inst.

Believe me, yours, very truly,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, January 21, 1892.

SIR: I have the honor to inform you that immediately after my interview with you on the 15th instant in regard to the countries who are to name the arbitrators in the Behring Sea controversy, I telegraphed to the Marquis of Salisbury that you did not insist upon the knowledge of English by the arbitrators as a condition, but merely as a desirable qualification.

I have now received a telegram from His Lordship stating that Her Majesty's Government accept your proposal that the arbitrators shall be chosen by France, Italy, and Sweden.

I have, etc.,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, January 30, 1892.

SIR: All the details of the Behring Sea arbitration having now been finally settled by the understanding arrived at as to the Governments who shall be invited to select the three foreign arbitrators, I have the honor to request you to be good enough to inform me whether you are prepared to proceed at once to the preparation and signature of the formal arbitration convention and of the joint commission agreement, in accordance with the text of the articles to be inserted therein which was signed by us on the 18th December last.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, February 4, 1892.

SIR: I have the honor to acknowledge the receipt of your note of the 30th ultimo, in which you refer to the settlement which has been reached in completion of the details of the Behring Sea arbitration, and inquire whether I am prepared to proceed at once to the preparation and signature of the formal arbitration convention and of the joint commission agreement, in accordance with the text of the articles to be inserted therein which was signed by us on the 18th December last.

In reply I have the pleasure to hand you a copy of the text of the arbitration convention, including the text of the joint commission agreement, as agreed upon in conferences held since the 30th ultimo, and I am instructed by the President to say that I hold myself in readiness to meet you forthwith, in order that we may at once proceed to the signature of said convention.

I have, etc.,

JAMES G. BLAINE.

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, February 4, 1892.

SIR: I have the honor to inform you that the President has this day appointed and commissioned Thomas Corwin Mendenhall and Clinton Hart Merriam to act as commissioners on the part of the Government of the United States, in accordance with the agreement which I signed with you on December 18, 1891, to investigate and report conjointly with commissioners to be appointed by the British Government, upon the facts having relation to the preservation of seal life in Behring Sea, and the measures necessary for its protection and preservation, with a view to the submission of their conclusions to the board of arbitrators whose constitution has already been agreed upon by us.

Until the convention for arbitration shall have been signed the commissioners will not be expected to agree upon or formulate any report, but after I shall be officially advised by you of the appointment of commissioners on the part of the British Government, the commissioners on the part of the United States will hold themselves ready to confer informally with their British colleagues at such time as may suit their convenience.

I have, etc.,

JAMES G. BLAINE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, February 6, 1892.

SIR: I have the honor to acknowledge the receipt of your note dated February 4 (but only delivered yesterday evening), in which you inform me that the President has appointed Mr. Mendenhall and Mr. Merriam commissioners on the part of the Government of the United States on the joint commission therein referred to.

Sir George Baden-Powell and Professor Dawson, whom I had the honor to present to you on the 1st instant, have been duly appointed commissioners on the part of Her Majesty's Government, and, as I have already stated to you verbally, they are furnished with their credentials in due form.

On the 13th ultimo, at your request, I communicated to the Marquis of Salisbury, by telegraph, your desire that the British commissioners should proceed at once to Washington. Accordingly Sir George Baden-Powell left England for that purpose by the first steamer, and arrived here with Dr. Dawson on the 1st of the month. They have been waiting ever since to be placed in communication with the United States commissioners, and I trust that arrangements will be made for the meeting of the commission on Monday next for the purpose indicated in the last paragraph of your note under reply, although the British commissioners came prepared not for an informal conference, but to proceed officially to business.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, February 6, 1892.

SIR: I am in receipt of your note of this date, in which you give me the official notification of the appointment of Sir George Baden Powell and Prof. Dawson as commissioners on the part of the British Government on the joint commission created in view of the proposed fur-seal arbitration.

In acknowledging your note, I deem it important to direct your attention to the fact that the Government of the United States, in nominating the commissioners on its part, selected gentlemen who were especially fitted by their scientific attainments, and who were in no wise disqualified for an impartial investigation and determination of the questions to be submitted to them, by a public declaration of opinion previous or subsequent to their selection. It is to be regretted that a similar course does not seem to have been adopted by the British Government. It appears from a document which you transmitted to me, under date of March 9, 1890 (inclosure 4), that one of the gentlemen selected by your Government to act as a commissioner on its part has fully committed himself in advance on all the questions which are to be submitted to him for investigation and decision.

I am further informed that the other gentleman named in your note had previous to his selection made public his views on the subject, and that very recently he has announced in an address to his parliamentary constituents that the result of the investigation of this commission and of the proposed arbitration, would be in favor of his Government.

I trust, however, that these circumstances will not impair the candid and impartial investigation and determination which was the object had in view in the creation of the commission, and that the result of its labors may greatly promote an equitable and mutually satisfactory adjustment of the questions at issue.

The commissioners on the part of the United States have been instructed to put themselves in communication with the British commissioners, to tender them an apartment at the Department of State for the joint conference and, if it shall suit their convenience, to agree with them upon an hour for their first conference on Monday next, the 8th instant.

It is proper to add that when I indicated to you on the 13th ultimo that the British Commissioner, then in London, might come at once to Washington, I supposed we should before this date have signed the arbitration convention, and thus have enabled the Commissioners to proceed officially to a discharge of their duties. But as it became necessary to await the approval of the draft of that instrument which you have forwarded to London, I have interposed no objection to preliminary conferences of the Commissioners, anticipating the signature of the convention within a very brief period.

I have, etc.,

JAMES G. BLAINE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, February 8, 1892.

SIR: I have the honor to acknowledge the receipt of your note of the 6th instant, in which you observe upon the selection made by our

respective Governments of the members of the Joint Commission which is about to sit at Washington for the purpose of investigating and reporting upon the facts having relation to seal life in Behring Sea with a view to the proposed arbitration.

The second paragraph of your note contains the following passage:

> I deem it important to direct your attention to the fact that the Government of the United States, in nominating the Commissioners on its part, selected gentlemen who were especially fitted by their scientific attainments and who were in no wise disqualified for an impartial investigation or determination of the questions to be submitted to them, by a public declaration of opinion previous or subsequent to their selection. It is to be regretted that a similar course does not seem to have been adopted by the British Government.

While I have much pleasure in congratulating your Government on having secured on their side the services of two such distinguished gentlemen as Prof. Mendenhall and Dr. Merriam, I must express my surprise and regret that you should have thought fit to refer in terms of disparagement to the choice made by Her Majesty's Government.

The British commissioners, Sir George Baden Powell and Dr. Dawson, are gentlemen whose scientific attainments and special qualifications for the duties intrusted to them are too well known to require any vindication on my part. But you complain of the fact that Dr. Dawson in 1890 wrote a paper on the protection of the fur seal in the North Pacific in which he committed himself to certain views. This shows that he has made the subject his special study, and it appears to me that he is all the more qualified on that account to take part in the labors of the joint commission, which, I beg leave to point out, is not a board of arbitration, but one of investigation.

Dr. Dawson's note on the fur seal to which you refer, was merely based upon such published material as was at the time available, and I have his authority for stating that he does not feel himself in any way bound to the opinions expressed from the study of that material, in the light of subsequent personal investigation on the ground.

You likewise complain that Sir George Baden Powell had, previously to his selection as commissioner, made public his views on the subject, and also that he is reported to have stated in an address to his parliamentary constituents that the result of the investigation of the joint commission and of the proposed arbitration would be in favor of his Government.

Sir George Baden-Powell is particularly qualified to take part in the inquiry by reason of his personal investigation into the industrial part of the question, which he pursued in 1887 and 1889 in San Francisco and British Columbia. From the first he has advocated in all his public statements a full inquiry into the facts of seal life in Behring Sea before any final agreement should be arrived at, in order that the views of all parties should be tested as to the best method of protecting seal life. There is no just ground, therefore, for charging him with partiality. As regards the language imputed to him on the occasion of an address which he recently delivered to his constituents in England on the labor question, it appears that some introductory remarks in which he referred to the Behring Sea question were inaccurately reported. What he did state was that, thanks to the arrangement arrived at between the two Governments, the Behring Sea difficulty would now be settled in the true interests of all concerned and not of any one side or the other.

I may mention that the opinions of Prof. Mendendall and Dr. Merriam on the fur-seal question were published in several journals in this

country shortly after their return from Behring Sea, and were stated (I know not with what accuracy) to be opposed to the views which have been urged on the side of Her Majesty's Government.

But I do not suggest that the United States Commissioners on that account are disqualified from taking part in the labors of the joint commission. I claim that all the commissioners, British and American, are equally entitled to the confidence of both Governments, as men of science, honor, and impartiality.

The course which has been adopted for ascertaining what measures may be necessary for the protection of the fur-seal species is substantially the same as that which I had the honor to propose to you on behalf of Her Majesty's Government nearly two years ago in the form of a draft convention, inclosed in my note of April 29, 1890.

I rejoice that the proposal I then made is now to be carried out, and I cordially unite in the hope expressed in your note under reply that the result of the labors of the joint commission will promote an equitable and mutually satisfactory adjustment of the questions at issue.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, February 9, 1892.

SIR: I have been informed by the American Seal Commissioners that in an informal meeting with their British colleagues on yesterday the latter expressed an unwillingness to enter upon conferences of any other than an official character, and they therefore proposed that their joint conferences be postponed until after the arbitration convention shall have been signed.

I beg to state to you that the Government of the United States is very anxious to expedite as much as possible the consideration of the important questions submitted to the commissioners, and in view of the fact that it regards the arbitration convention as substantially agreed upon, the American commissioners have been instructed to make known to the British commissioners their readiness to formally arrange the joint conference and proceed without further delay to the discharge of the duties assigned to them.

I have, etc.,

JAMES G. BLAINE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, February 11, 1892.

SIR: I had the honor to receive yesterday your note of the 9th instant, in which you state that you have been informed by the American seal commissioners that in an informal meeting with their British colleagues on the 8th instant, the latter expressed an unwillingness to enter upon conferences of any other than an official character, and they

therefore proposed that their joint conferences be postponed until after the arbitration convention has been signed.

The British commissioners, to whom I communicated your note, have informed me that at the preliminary conference of the commissioners on the 8th instant they discussed with their colleagues what work of a preparatory character could be got through at once. The meeting was informal, according to the conditions laid down in the last paragraph in your note to me of the 4th instant, and it was arranged by the four commissioners to hold a second preliminary conference this day at the State Department at 3 o'clock, at which they could discuss certain matters, which they had undertaken to consider in the interval, and other preparatory work.

In consequence of your note of the 9th instant, the British commissioners hope at the conference to-day to arrange with their colleagues that the joint conference shall proceed to business formally.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Blaine to Sir Julian Pauncefote.

17 MADISON PLACE,
Washington, February 12, 1892.

MY DEAR SIR JULIAN: The motive you have always urged upon me for assembling the commissioners on seal fisheries at an early date, was that they could provide a *modus vivendi* that would be sufficient, while the arbitration should go on with plenty of time to consider the various points.

I was surprised to hear that your commissioners yesterday declined to discuss the *modus vivendi* on the allegation that that was a subject reserved for you and me. This puts an entirely new phase upon the work of the commission and largely diminishes its value. Will you have the goodness to advise me of the precise scope of the work which you assigned to your commissioners?

Very truly, yours,

JAMES G. BLAINE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, February 13, 1892.

SIR: With reference to your note of the 4th instant inclosing a copy of the draft of the proposed Behring Sea arbitration convention, I have the honor to inform you that, as previously arranged between us, I transmitted a copy of the draft by the mail of the 6th instant to the Marquis of Salisbury for the approval of Her Majesty's Government, and that I am awaiting his lordship's instructions before proceeding further in the matter.

I have, etc.,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, February 19, 1892. (Received February 20.)

SIR: On the occasion of our interview on the 2d instant, when you handed me the draft of the Behring Sea Arbitration Convention, which I forwarded to London for the consideration of Her Majesty's Government, you asked me whether they were prepared to agree to a "*modus vivendi*" for the next fishery season in Behring Sea. In transmitting the draft of the arbitration convention to the Marquis of Salisbury, I did not fail to inform him of your inquiry, and I have now received a reply from his lordship to the effect that Her Majesty's Government can not express any opinion on the subject until they know what "*modus vivendi*" you desire to propose.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, February 24, 1892.

SIR: I am in receipt of your favor of the 19th. You therein inform me that Lord Salisbury can not express any opinion on the subject of the *modus vivendi* until he knows what we desire to propose.

I am glad to hear that Lord Salisbury contemplates a *modus;* for it is obvious that it is impossible to conclude the arbitration within the time originally set. Indeed, we shall hardly be able to enter upon it. The delays have been much greater on the part of Great Britain than on the part of the United States.

In reply to your inquiry, the President suggests that the *modus* should be much the same as last year in terms, but that it should be better executed. It was very ineffective last year, for there were a larger number of seals in Bering Sea taken then than ever before. The vessels had already set out before the *modus* was agreed upon, and it was impossible to give them notice in time to avoid their taking seals. Her Majesty's Government did not take such efficient measures as an earlier date this year will render practicable.

If Her Majesty's Government would make her efforts most effective, the sealing in the North Pacific Ocean should be forbidden, for there the slaughter of the mothers heavy with young is the greatest. This would require a notice to the large number of sealers which are preparing to go forth from British Columbia. The number is said to be greater than ever before, and without any law to regulate the killing of seals the destruction will be immense. All this suggests the great need of an effective *modus.* Holding an arbitration in regard to the rightful mode of taking seals while their destruction goes forward would be as if, while an arbitration to the title of timber land were in progress, one party should remove all the trees.

I shall have to ask you to transmit the contents of this note to Lord Salisbury by telegraph. Every day that is lost now entails great trouble upon both Governments.

I have, etc.,

JAMES G. BLAINE.

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, February 26, 1892.

MY DEAR SIR JULIAN: Mr. Myers, our consul at Victoria, telegraphs to-day that there are—

Forty-six sailing schooners cleared to date. Six or seven more to go. At the same date last year thirty-one cleared.

I think from this you will see that if we do not come to an understanding soon there will be no need of an agreement relating to seals in the north Pacific or in the Behring Sea. I will be glad if you will let Lord Salisbury know this fact.

Very truly yours,

JAMES G. BLAINE.

Mr. Blaine to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, February 27, 1892.

SIR: I have the honor to state that if you will have the kindness to call at this Department on Monday morning next, the 29th instant, at 11 o'clock, I shall be prepared to sign with you the treaty for the arbitration of the Behring Sea question which has been agreed upon between the Government of the United States and that of Her Britannic Majesty.

I have, etc.,

JAMES G. BLAINE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, February 29, 1892. (Received March 1.)

SIR: Immediately upon the receipt of your note of the 24th instant, respecting a renewal of the *modus vivendi* in Behring Sea, and in accordance with the wish therein expressed, I telegraphed its contents to the Marquis of Salisbury. In that note, after observing that it is impossible to conclude the arbitration within the time originally set, and that the delays have been much greater on the part of Great Britain than on the part of the United States, you proceed to inform me that, in the view of the President, the new *modus vivendi* should be much the same as that of last year, in terms; that, owing to the earlier date this year, it could be more effectively executed; but that, "if Her Majesty's Government would make their efforts most effective, the sealing in the North Pacific Ocean should be forbidden."

After pointing out "the great need of an effective modus," you state that "holding an arbitration in regard to the rightful mode of taking seals, while their destruction goes forward, would be as if, while an arbitration to the title to timberland were in progress, one party should remove all the trees."

I have the honor to inform you that I have received a reply from Lord Salisbury to the following effect: In the first place his lordship states

that he can not in any degree admit that the delays have been greater on the part of Great Britain than on the part of the United States.

As regards the necessity for another *modus vivendi*, Her Majesty's Government consented to that measure last year, solely on the ground that it was supposed that there would be danger to the preservation of the seal-species in Behring Sea, unless some interval in the slaughter of seals were prescribed both at sea and on land. But Her Majesty's Government have received no information to show that so drastic a remedy is necessary for two consecutive seasons. On the contrary, the British commissioners on the Behring Sea joint commission have informed Her Majesty's Government that, so far as pelagic sealing is concerned, there is no danger of any serious diminution of the fur-seal species, as a consequence of this year's hunting.

Nevertheless, Lord Salisbury would not object, as a temporary measure of precaution for this season, to the prohibition of all killing at sea within a zone extending to not more than 30 nautical miles around the Pribyloff Islands, such prohibition being conditional on the restriction of the number of seals to be killed for any purpose on the Islands, to a maximum of 30,000. Lord Salisbury, referring to the passage in your note in which you compare the case to an arbitration about timber land, from which the trees are being removed by one of the parties, observes that he hardly thinks the simile quite apposite. His lordship suggests that the case is more like one of arbitration respecting the title to a meadow. While the arbitration is going on, he adds, we cut the grass; and, quite rightly, for the grass will be reproduced next year, and so will the seals.

I have, etc.,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Blaine.

BRITISH LEGATION,
Washington, March 7, 1892.

SIR: With reference to my note of the 29th ultimo, in which I had the honor to inform you that the Marquis of Salisbury had received no information to show the necessity for renewing, during the approaching Fishery Season, the *modus vivendi* of last year in Behrings Sea as proposed in your note to me of the 24th ultimo, I think it opportune to remind you of the following fact in connection with that *modus vivendi* which may have escaped your attention, as you were absent from Washington at the time of its negotiation.

In the course of the correspondence which then took place it was distinctly notified to your Government that the *modus vivendi* would not be renewed for the following season. You will find that, at the close of the memorandum inclosed in my note to Mr. Wharton of June 6, 1891, I stated under instructions from my Government that "the suspension of sealing was not a measure which they could repeat another year."

Her Majesty's Government consented to that measure in consequence of the rumors widely circulated of impending danger to the seal species. But since then the conditions of the fur seal fishery have been investigated on the spot by experts appointed for that purpose by Her Majesty's Government. Those experts have advised that there is no danger of any serious diminution of the fur-seal species from pelagic

sealing during the present year, and that to renew the prohibition of pelagic sealing for another season would be going far beyond the necessities of the case.

Lord Salisbury's proposal of a 30-miles radius round the Pribyloff Islands within which no sealing should be allowed is a judicious temporary measure of precaution pending the establishment of permanent regulations for the fishery as a whole. It is a somewhat larger proposal than that which you originally made to me on the 16th of March, 1891, and which was for a similar radius of 25 miles only.

The reason why you subsequently abandoned that "radius" proposal is stated in your note to me of 4th May, 1891. That reason was not that such a radius would be ineffectual, but that "it might possibly provoke conflict in the Behrings Sea."

At that time no act of Parliament had been passed in England to empower Her Majesty's Government to enforce such a measure on British vessels, and no doubt there was some danger on that account of it giving rise to difficulties. But it is otherwise now. By the seal fishery (Behrings Sea) Act of 1891 (54 Vic., c. 19), Her Majesty is empowered by Order in Council to prohibit under severe penalties the catching of seals by British ships in any part of Behrings Sea defined by the Order, and therefore the enforcement of the new *modus vivendi* now proposed by Lord Salisbury would present much less difficulty than was experienced last season in putting the existing one into operation.

I trust that the above observations which I venture to offer in further elucidation of the proposal contained in my note of the 29th ultimo will satisfy your Government that it is, under the circumstances, a reasonable proposal, and one which will, if acceded to, sufficiently safeguard the interests of both nations during the few months comprised in the next fishery season, and pending the decision of the arbitrators.

I have, etc.,

JULIAN PAUNCEFOTE.

Mr. Wharton to Sir J. Pauncefote.

DEPARTMENT OF STATE,
Washington, March 8, 1892.

SIR: I am directed by the President to say, in response to your two notes of February 29 and March 2, that he notices with the deepest regret the indisposition of Her Majesty's Government to agree upon an effective *modus* for the preservation of the seals in the Behring Sea, pending the settlement of the respective rights of that Government and of the Government of the United States in those waters and in the fur-seal fisheries therein. The United States claims an exclusive right to take seals in a portion of the Bering Sea, while Her Majesty's Government claims a common right to pursue and take the seals in those waters outside a 3-mile limit. This serious and protracted controversy, it has now been happily agreed, shall be submitted to the determination of a tribunal of arbitration, and the treaty only awaits the action of the American Senate.

The judgment of the arbitration tribunal can not, however, be reached and stated in time to control the conduct of the respective Governments and of their citizens during the sealing season of 1892; and the urgent question now is, What does good faith, to say nothing of international

comity, require of the parties to the arbitration? If the contention of this Government is sustained by the arbitrators, then any killing of seals by the Canadian sealers during this season in these waters is an injury to this Government in its jurisdiction and property. The injury is not measured by the skins taken, but affects the permanent value of our property. Was it ever heard before that one party to such a controversy, whether a nation or an individual, could appropriate the whole or any part of the income and profits, much less the body of the contested property, pending the litigation without accountability? Usually a court of chancery would place a receiver or trustee in charge and hold the income of the property for the benefit of the prevailing party.

You say that Lord Salisbury, rejecting the illustration used by Mr. Blaine, "suggests that the case is more like one of arbitration respecting title to a meadow. While the arbitration is going on we cut the grass; and quite rightly, for the grass will be reproduced next year and so will the seals." He can hardly mean by this illustration that being in contention with a neighbor regarding the title to a meadow, he could by any precedent in the equity courts or by any standard of common honesty be justified in pocketing the whole or any part of the gains of a harvest without accountability to the adverse claimant whose exclusive title was afterwards established. It is no answer for the trespasser to say that the true owner will have an undimished harvest next year. Last year's harvest was his also. If by the use of the plural pronoun his lordship means that the harvest of the contested meadow is to be divided between the litigants I beg to remind him that the title of the United States to the Pribyloff Islands has not yet been contested, and that our flag does not float over any sealing vessel. The illustration is inapt in the further particular that the seals not taken this year may be taken next, while the grass must be harvested or lost.

This Government has already been advised in the course of this correspondence that Great Britain repudiates all obligations to indemnify the United States for any invasion of its jurisdiction or any injury done to its sealing property by the Canadian sealers. The attempt to make a damage clause one of the articles of the arbitration agreement failed, because Her Majesty's Government would not consent that the question of its liability to indemnify the United States for the injuries done by the Canadian sealers should be submitted. Two extracts from the correspondence will sufficiently recall the attitude of the respective governments:

In my note of July 23, I said:

> The President believes that Her Majesty's Government may justly be held responsible, under the attendant circumstances, for injuries done to the jurisdictional or property rights of the United States by the sealing vessels flying the British flag, at least since the date when the right of these vessels to invade the Behring Sea and to pursue therein the business of pelagic sealing was made the subject of diplomatic intervention by Lord Salisbury. In his opinion justice requires that Her Majesty's Government should respond for the injuries done by those vessels, if their acts are found to have been wrongful, as fully as if each had borne a commission from the Government to do the act complained of. The presence of the master, or even of a third person, under circumstances calculated and intended to give encouragement, creates a liability for trespass at the common law, and much more if his presence is accompanied with declarations of right, protests against the defense which the owner is endeavoring to make, and a declared purpose to aid the trespassers if they are resisted. The justice of this rule is so apparent that it is not seen how in the less technical tribunal of an international arbitration it could be held to be inapplicable.
>
> The United States might well insist that Her Majesty's Government should admit responsibility for the acts of the Canadian sealers, which it has so directly encouraged and promoted, precisely as in the proposal the United States admits responsibility for the acts of its revenue vessels. But, with a view to remove what seems to be

the last point of difference in a discussion which has been very much protracted, the President is willing to modify his proposal and directs me to offer the following:

"The Government of Great Britain having presented the claims of its subjects for compensation for the seizure of their vessels by the United States in Behring Sea, and the Government of the United States having presented in its own behalf, as well as of the lessees of the privileges of taking seals on the Pribyloff Islands, claims for compensation by reason of the killing of seals in the Behring Sea by persons acting under the protection of the British flag, the arbitrators shall consider and decide upon such claims in accordance with justice and equity, and the respective rights of the high contracting powers, and it shall be competent for the arbitrators to award such compensation as, in their judgment, shall seem equitable."

In your note of October 17, you say:

I regret to inform you that Her Majesty's Government, after the fullest consideration, have arrived at the conclusion that this new clause could not properly be assented to by them. In their opinion it implies an admission of a doctrine respecting the liabilities of governments for the acts of their nationals or other persons sailing under their flag on the high seas for which there is no warrant in the law of nations. Thus it contains the following words:

"The Government of the United States have presented on its own behalf, as well as of the lessees of the privilege of taking seals on the Pribyloff Islands, claims for compensation by reason of the killing of seals in Behring Sea by persons acting under the protection of the British flag, the arbitrators shall consider and decide upon such claims."

These words involve the proposition that Her Majesty's Government are liable to make good losses resulting from the wrongful action of persons sailing outside their jurisdiction under the British flag. Her Majesty's Government could not accept such a doctrine.

The President can not believe that while holding this view of its accountability the Government of Great Britain will, pending the arbitration, countenance, much less justify or defend, the continuance of pelagic sealing by its subjects. It should either assume responsibility for the acts of these sealers, or restrain them from a pursuit the lawfulness of which is to be determined by the arbitration.

In your note of February 29 you state that Her Majesty's Government has been informed by the British Commissioners "that so far as pelagic sealing is concerned, there is no danger of serious diminution of the fur-seal species as a consequence of this year's hunting," and upon this ground Lord Salisbury places his refusal to renew the *modus* of last year. His lordship seems to assume a determination of the arbitration against the United States and in favor of Great Britain, and that it is already only a question of so regulating a common right to take seals as to preserve the species. By what right does he do this? Upon what principle does he assume that if our claims are established, any diminution of the seals, whether serious or not, during this season, or indeed, any taking of seals, is to be without recompense?

In the opinion of the President, it is not consistent with good faith that either party to an arbitration should, pending a decision, in any degree diminish the value of the subject of arbitration or take any profit from the use of it without an agreement to account.

Before an agreement for arbitration had been reached the prohibition of pelagic sealing was a matter of comity; from the moment of the signing of that agreement it became, in his opinion, a matter of obligation.

During the season of 1891, notwithstanding the restrictions resulting from the *modus* adopted, the Canadian sealers took in the Behring Sea alone 28,768 skins, or nearly four times as many as the restricted catch upon our island. This Government is now advised that 51 vessels from British Columbia and 16 from Nova Scotia have sailed or are about to sail for the Behring Sea to engage in taking seals. This large increase in the fleet engaged makes it certain, in the absence of an effective *restrictive agreement*, that the destruction of seal life during this season

by pelagic sealing will be unprecedented, and will, in the opinion of our commissioners, so nearly destroy the value of the seal fisheries as to make what will remain, of so little value as scarcely to be a worthy subject for an international arbitration.

The proposition of Lord Salisbury to prohibit the killing of seals at sea "within a zone extending to not more than thirty nautical miles around the Pribyloff Islands" is so obviously inadequate and so impossible of execution that this Government can not entertain it. In the early part of the discussion of the subject of a *modus* for last year, this method was tentatively suggested among others in conversation between yourself and Mr. Blaine. But it was afterward in effect agreed by both Governments to be inadequate, and was not again referred to in the correspondence. In the memorandum furnished by you with your note of June 6, you say:

> Lord Salisbury points out that if seal hunting be prohibited on one side of a purely imaginary line drawn in the open ocean, while it is permitted on the other side of the line, it will be impossible in many cases to prove unlawful sealing or to infer it from the possession of skins or fishing tackle.

This was said with reference to the water boundary of our purchase from Russia, but is quite as applicable to the 30-mile zone which he now suggests. The prevalence of fogs in these waters gives increased force and conclusiveness to the point made by his lordship against an imaginary water line. The President can not agree, now that the terms of arbitration have been settled, that the restrictions imposed shall be less than those which both Governments deemed to be appropriate when it was still uncertain whether an early adjustment of the controversy was attainable. He therefore hopes that Her Majesty's Government will consent to renew the arrangement of last year with the promptness which the exigency demands and to agree to enforce it by refusing all clearances to sealing vessels for the prohibited waters and by recalling from those waters all such vessels as have already cleared.

This Government will honorably abide the judgment of the high tribunal which has been agreed upon, whether that judgment be favorable or unfavorable, and will not seek to avoid a just responsibility for any of its acts which by that judgment are found to be unlawful. But certainly the United States can not be expected to suspend the defense, by such means as are within its power, of the property and jurisdictional rights claimed by it, pending the arbitration, and to consent to receive them from that tribunal, if awarded, shorn of much of their value by the acts of irresponsible persons.

I have the honor to be, etc.,

WILLIAM F. WHARTON,
Acting Secretary.

CORRESPONDENCE WITH THE LEGATION OF THE UNITED STATES AT LONDON.

Mr. Phelps to Mr. Bayard.

No. 825.] LEGATION OF THE UNITED STATES,
London, September 12, 1888. (Received September 22.)

SIR: Referring to the subject of the Alaskan seal fisheries, and to the previous correspondence on the subject between the Department and this legation, I have now the honor to acquaint you with the pur-

port of a conversation which I held with Lord Salisbury in regard to it on the 13th August.

Illness, which has incapacitated me from business during most of the interval, has prevented my laying it before you earlier.

One of the objects of the interview I then sought with his lordship was to urge the completion of the convention between the United States, Great Britain, and Russia, which under your instructions had previously been the subject of discussion between the secretary for foreign affairs, the Russian ambassador, and myself. This convention, as I have before advised you, had been virtually agreed on verbally, except in its details; and the Russian as well as the United States Government were desirous to have it completed. The consideration of it had been suspended for communication by the British Government with the Canadian Government, for which purpose an interval of several months had been allowed to elapse. During this time the attention of Lord Salisbury had been repeatedly recalled to the subject by this legation, and on those occasions the answer received from him was that no reply from the Canadian authorities had arrived.

In the conversation on the 13th, above mentioned, I again pressed for the completion of the convention, as the extermination of the seals by Canadian vessels was understood to be rapidly proceeding. His lordship in reply did not question the propriety or the importance of taking measures to prevent the wanton destruction of so valuable an industry, in which, as he remarked, England had a large interest of its own, but said that the Canadian Government objected to any such restrictions, and that until its consent could be obtained, Her Majesty's Government was not willing to enter into the convention; that time would be requisite to bring this about, and that meanwhile the convention must wait.

It is very apparent to me that the British Government will not execute the desired convention without the concurrence of Canada. And it is equally apparent that the concurrence of Canada in any such arrangement is not to be reasonably expected. Certain Canadian vessels are making a profit out of the destruction of the seal in the breeding season in the waters in question, inhuman and wasteful as it is. That it leads to the speedy extermination of the animal is no loss to Canada, because no part of these seal fisheries belong to that country; and the only profit open to it in connection with them is by destroying the seal in the open sea during the breeding time, although many of the animals killed in that way are lost, and those saved are worth much less than when killed at the proper time.

Under these circumstances, the Government of the United States must, in my opinion, either submit to have these valuable fisheries destroyed or must take measures to prevent their destruction by capturing the vessels employed in it. Between these alternatives it does not appear to me there should be the slightest hesitation.

Much learning has been expended upon the discussion of the abstract question of the right of *mare clausum*. I do not conceive it to be applicable to the present case.

Here is a valuable fishery, and a large and, if properly managed, permanent industry, the property of the nations on whose shores it is carried on. It is proposed by the colony of a foreign nation, in defiance of the joint remonstrance of all the countries interested, to destroy this business by the indiscriminate slaughter and extermination of the animals in question, in the open neighboring sea, during the period of gestation, when the common dictates of humanity ought to protect *them, were there no* interest at all involved. And it is suggested that

we are prevented from defending ourselves against such depredations because the sea at a certain distance from the coast is free.

The same line of argument would take under its protection piracy and the slave trade, when prosecuted in the open sea, or would justify one nation in destroying the commerce of another by placing dangerous obstructions and derelicts in the open sea near its coasts. There are many things that can not be allowed to be done on the open sea with impunity, and against which every sea is *mare clausum*. And the right of self defense as to person and property prevails there as fully as elsewhere. If the fish upon the Canadian coasts could be destroyed by scattering poison in the open sea adjacent, with some small profit to those engaged in it, would Canada, upon the just principles of international law, be held defenseless in such a case? Yet that process would be no more destructive, inhuman, and wanton than this.

If precedents are wanting for a defense so necessary and so proper it is because precedents for such a course of conduct are likewise unknown. The best international law has arisen from precedents that have been established when the just occasion for them arose, undeterred by the discussion of abstract and inadequate rules.

Especially should there be no hesitation in taking this course with the vessels of a colony which has for three years harassed the fisheries of our country with constant captures of vessels engaged in no violation of treaty or legal rights. The comity of nations has not deterred Canada from the persistent obstruction of justifiable and legitimate fishing by American vessels near its coasts. What principle of reciprocity precludes us from putting an end to a pursuit of the seal by Canadian ships which is unjustifiable and illegitimate?

I earnestly recommend, therefore, that the vessels that have been already seized while engaged in this business be firmly held, and that measures be taken to capture and hold every one hereafter found concerned in it. If further legislation is necessary, it can doubtless be readily obtained.

There need be no fear but that a resolute stand on this subject will at once put an end to the mischief complained of. It is not to be reasonably expected that Great Britain will either encourage or sustain her colonies in conduct which she herself concedes to be wrong and which is detrimental to her own interests as well as to ours. More than 10,000 people are engaged in London alone in the preparation of seal skins. And it is understood that the British Government has requested that clearances should not be issued in Canada for vessels employed in this business; but the request has been disregarded.

I have, etc.,

E. J. PHELPS.

Mr. White to Mr. Blaine.

No. 132.] LEGATION OF THE UNITED STATES,
London, December 4, 1889. (Received December 14.)

SIR: Referring to my dispatch No. 128, of the 30th ultimo, I have the honor to inclose herewith, for your information, cuttings from the Times of the 3d instant, containing further correspondence with reference to the Bering Sea fisheries.

I have, etc.,

HENRY WHITE.

[From the London Times, Saturday, November 30, 1889.]

THE BERING SEA QUESTION.

To the Editor of the Times:

SIR: Mr. Staveley Hill has done a great public service in calling attention anew to the matters in dispute in regard to the seal fisheries in Bering Sea. He gives in his interesting letter information of the greatest value to those who would wish to understand the question. But in order rightly to understand the question it is necessary to supplement and even modify Mr. Staveley Hill's account—briefly indeed—on three main points.

First, then, as to the "pretended apathy of Great Britain." Certainly nothing has yet been done. But since I made my first inquiries on the Pacific coast in 1886, immediately after the troubles commenced, up to my visit to Vancouver Island in the spring of this year, I know that both the Imperial and the Canadian governments have had the matter constantly in hand. The Bering Sea dispute was one intrusted to Mr. Chamberlain's commission, although for specific reasons it was not proceeded with at Washington. In the House of Commons, where I have taken occasion to call attention to each Bering Sea seizure as it has occurred, we have from time to time been told of negotiations in progress, and I doubt not but that when the next installment of official correspondence is published we shall find much strong and probably "vigorous" language in the diplomatic record.

Secondly, Mr. Staveley Hill's graphic description of the fisheries on the Pribilof Islands would lead one to suppose that Canadian sealers captured the young males, "dry cows," and others of the seal community who can not find room on the rookeries. As a matter of fact, the Canadian sealers take very few, if any, seals close to these islands. Their main catch is made far out at sea, and is almost entirely composed of females. Again, Mr. Staveley Hill advocates a close time, excepting for the months of July, August, and September. But the Canadian sealers commence sealing in December, and seal continuously from then till August. Nor does a close time get over the difficulty of jurisdiction over the high seas, for the seals are chiefly captured 25 to 30 miles from land. But I will not now point out other numerous details which I gathered in my inquiries from the point of view of natural history. I have said enough to show how complex is the subject.

The third point I would mention in supplement is that American as well as Canadian sealers engage in, as they term it, this "marine fur industry;" and, as I know by personal inquiry among them, are just as indignant as the Canadians at the high-handed proceedings of the Alaskan authorities.

But, sir, as I have said on more than one occasion, I believe the matters in dispute can best be settled on economic rather than on diplomatic pleas. All sides wish the seals preserved; all wish to see the market prices of skins maintained. Judging by what I know to be the views held by officials in Washington, in Ottawa, and in London, by "marine sealers," whether Canadian or American, and by the Alaska Commercial Company, it would be easy on one condition to arrive at an international agreement embodying regulations which all would obey and all would accept as useful and right. These regulations would cover more than a close time, but all interested would accept them as a final close of a vexatious dispute.

The one condition of success is that these regulations be drawn up in the light of a full and complete knowledge of the natural history of the case. They must embody the one general view of the whole industry, and not the partial views either of the rookery owners or of the "marine" sealers.

Mr. Stavely Hill has, with great point and ability, alluded to the hollowness of the case for Alaska in international law. I would venture to add that international law had best been called in now, with the view not so much of upsetting the past as of regulating the future.

The whole dispute is to many one of much intrinsic interest, but its extrinsic effect on the relations between Canada and the British Empire and the United States are of far higher import; and I earnestly trust that Lord Salisbury is even now working out some satisfactory solution of this Bering Sea difficulty.

I am your obedient servant,

GEORGE BADEN-POWELL.

[From the London Times, Tuesday, December 3, 1889.]

THE BERING SEA QUESTION.

To the Editor of the Times:

SIR: Sir George Baden-Powell, in his valuable comments on Mr. Staveley Hill's letter upon the Bering Sea question, says truly that the one condition of success in all future regulations is that "they should be drawn up in the light of a full and complete knowledge of the natural history of the case."

Scarcely a century ago fur seals existed in numbers which appear now almost incredible on many coasts and islands of the Southern Ocean, Juan Fernandez, Chili, the Falkland Islands, South Georgia, South Shetland, Prince Edward Island, the Crozettes, some parts of Australia, Antipodes Island, and many more, mostly within our dominions or within British influence, all possessed "rookeries," or breeding places of seals, which, if protected, might have been still as populous and valuable as those on Pribilof Islands in the Bering Sea. Every one of these, however, has, owing to the ruthless and indiscriminate slaughter carried on by ignorant and lawless sealers, regardless of everything but immediate profit, been totally annihilated, or so reduced in numbers that it is no longer worth while to visit them. The only spot in the world where fur seals are now found in their original, or even increased, numbers is the Pribilof group, a circumstance entirely owing to the rigid enforcement of the wise regulations of the Alaskan Commercial Company, which are based on a thorough knowledge of the habits of the animals. But for this the fur seal might before now have been added to the long list of animals exterminated from the earth by the hand of man.

Of course it is not my province to enter into the question of the recent alleged illegal or high-handed proceedings of the Alaskan authorities or the wrongs of the Canadian fishermen, so graphically described by Mr. Staveley Hill. They may be safely left in Lord Salisbury's hands; but if they have been such as to call the serious attention of both governments concerned to the necessity of coming to a definite understanding for the future protection of the seals, not only in the islands, but throughout the whole region of their migrations, these events will not have been without their use. The fact that the interests of the seals are also in the long run the interests of those who capture and destroy them has, unfortunately, not saved them from destruction elsewhere; but it is to be hoped that this sad history will not be lost sight of in dealing with them in their one remaining stronghold.

I am, your obedient servant,

W. H. FLOWER.

NATURAL HISTORY MUSEUM,
Cromwell Road, S. W., November 30.

Mr. Lincoln to Mr. Blaine.

No. 394.] LEGATION OF THE UNITED STATES,
London, January 24, 1891. (Received February 4.)

SIR: I have the honor to inclose herewith, for your information, a cutting from to-day's Times, reporting an answer, in the House of Commons yesterday, of Sir James Fergusson to a question asked by Prof. Bryce as to the present status of the Behring Sea question.

I have, etc.,

ROBERT T. LINCOLN.

[From the London Times, January 24, 1891.]

THE BERING SEA FISHERIES.

Mr. Bryce asked the under-secretary for foreign affairs whether he could give the House any information regarding the present position of the negotiations between Her Majesty and the Government of the United States of America regarding the seal fisheries in Bering Sea; whether, in particular, he could state what was the nature of the proceedings reported to have been recently taken in the Supreme Court of the United States in connection with the seizure of a sealing vessel which was sailing under the British flag; and when it was intended to present to Parliament papers relating to this subject.

Sir J. Fergusson. Negotiations regarding the seal fisheries in the North Pacific Ocean are proceeding in ordinary diplomatic course. A long note was addressed by the United States Government to Her Majesty's minister at Washington on the 17th of December, to which a reply has not yet been made. The proceedings taken in the Supreme Court of the United States are a motion for a writ of prohibition to the district court of Alaska in respect of alleged excess of jurisdiction by that court in condemning a Canadian vessel which was engaged in seal fishery in the open sea.

That application has not yet been heard. This course was taken at the instance of the Canadian government, with the approval of Her Majesty's Government, and upon the advice of American lawyers. Its object is to bring the case before the highest tribunal in the United States in the fullest manner. It is desirable to point out that in this course there is no interference in any sense with the diplomatic question. Diplomatic negotiations have reference to a wrong which we say has been committed against international law and can only be redressed by diplomacy. The legal proceedings, on the other hand, before the Supreme Court have reference to a wrong committed, as we believe, on British subjects against the municipal law of the United States; and redress for that wrong can only be maintained, at least in the first instance, from the supreme tribunal of the United States. At present I am unable to say anything as to the presentation of further papers. [Hear, hear!]

Mr. Bryce. Can the right honorable gentleman at all indicate when he thinks any papers bearing on the question of the proceedings in the Supreme Court will be presented?

Sir J. Fergusson. I think the honorable member will see that, as the application has not been heard, it is quite impossible to make any promise at present. [Hear, hear.]

Mr. Lincoln to Mr. Blaine.

No. 470.] LEGATION OF THE UNITED STATES,
London, June 6, 1891. (Received June 17.)

SIR: Referring to my dispatch numbered 468 of 3d instant, I have the honor to inclose herewith, for your information, the report of a debate which took place on the 4th instant in the House of Commons upon the third reading of the Behring Sea (seal fishery) bill, which, I may add, was read for the first time in the House of Lords without debate yesterday.

I have, etc.,

ROBERT T. LINCOLN.

[From the London Times, Friday, June 5, 1891.]

SEAL FISHERY (BERING SEA) BILL.

The consideration of this bill in committee was resumed on clause 1 (power to prohibit by order in council the hunting of seals in Bering Sea). The first subsection enables Her Majesty by order in council to prohibit the catching of seals by British ships in Bering Sea during the period limited by such order.

Mr. A. S. Hill moved to add after "order" "if the Legislature of the Dominion shall consent to such prohibition." He said that the persons most concerned were the Canadians, and they were by no means consenting parties to this measure. The Americans required that they should be allowed to kill 7,500 seals on their own account. Whatever number of seals they claimed to kill, they ought to kill in the open seas and not in the rookeries. These 7,500 seals were not to be killed for food for the islanders. But the United States said that they kept 300 Aleutian islanders in the seal fisheries, and if the prohibition was to affect them they would have themselves to keep these servants of theirs, and for their wages would have to pay some £20,000. A more monstrous claim could not be put forward. If there was to be any claim at all it should be made by the Victorian fishermen.

Mr. W. H. Smith regretted that his honorable and learned friend was not satisfied with the assurance which the Government had given. He said distinctly on the second reading that the Government could not assent to the introduction of these words. The Dominion had a right to legislate so far as her own people were concerned, but she had no right to legislate for the British flag. The Bering Sea was some thousand miles away from Canada, and the Canadian Government had received every assurance that compensation should be given to any British subject who, it could be shown, would suffer loss. Her Majesty's Government hoped that the British losses would be a great deal less than his honorable and learned friend supposed. The destruction of 7,500 seals was considerable, but they were willing to consent to that proposal in order to put an end to a serious danger.

Mr. A. S. Hill said that, after the assurance of the right honorable gentleman, he would not, of course, proceed further with his amendment. He had, however, received a cablegram from Canada on the subject.

Mr. Bryce asked for some information as to what had passed between the Government and the Canadian Government and the nature of the terms that had been arranged.

Mr. W. H. Smith said the Government had satisfied themselves that the Canadian Government had accepted the view he had previously indicated. He would endeavor to give the House further information on the subject as soon as possible.

Sir G. Campbell wanted a more explicit assurance on the subject of compensation and expressed the hope that the British taxpayer was not to become liable.

The amendment was withdrawn and the clause was added to the bill, as was also clause 2.

On lcause 3 (application and construction of act and short title).

Mr. G. O. Morgan referred to the phrase "marine animal," and asked whether it was likely to include whales

Mr. W. H. Smith said the phraseology of the clause had been carefully considered, but of course Her Majesty's Government did not intend to prohibit the catching of whales.

The clause was agreed to, and the bill reported without amendments to the House.

The House resumed.

Mr. W. H. Smith appealed to the House to allow the bill to be read a third time now. It was of great importance, and it was also desirable that no delay should take place.

Sir W. Harcourt joined in the appeal and hoped that no objection would be taken to the course suggested by the right honorable gentleman. He asked the First Lord of the Treasury to lay on the table of the House the communications which had passed with the Canadian government.

Mr. W. H. Smith said there was no reason why the House should not be placed in possession of the information.

Mr. Sexton hoped that the First Lord of the Treasury would appreciate the forbearance of the Irish members in allowing the bill to be read a third time. [Laughter.]

The bill was read a third time.

Mr. Lincoln to Mr. Blaine.

No. 472.] LEGATION OF THE UNITED STATES,
London, June 10, 1891. (Received June 19.)

SIR: Referring to my dispatch numbered 470 of 6th instant, I have the honor to inclose herewith the report of a short debate which took place in the House of Lords on the 8th instant, when the Bering Sea bill was passed, after having been slightly amended on the Marquis of Salisbury's motion.

I have, etc.,

ROBERT LINCOLN.

[Inclosure in No. 472.]

[From the Times, June 9, 1891.]

The Marquis of Salisbury, in moving that the bill be read a second time, said * * * The measure I am now submitting is one to enable Her Majesty to stop seal hunting on the part of British subjects in Behring Sea for terms to be specified in an order in council. The first aim of this provision is to enable Her Majesty's Government to come to an agreement with the United States to suspend the hunting for seals in Bering Sea, or a great part thereof, during the ensuing season. As your lordships are aware, there has been for some time a very vigorous discussion proceeding between the United States and this country. The United States have asserted claims over the open sea, and a right to stop the hunting of seals in that sea, which Her Majesty's Government have not admitted and can not admit. After much discussion we have

agreed in principle that the difference shall be referred to arbitration, and we hope that the terms on which that arbitration is to be established are almost agreed upon. I believe there are very few points of difference remaining, but in the meantime the question raised by the motive which mainly actuates the United States, namely, the desire to prevent the extermination of the animal which sustains a valuable industry, remains unsolved.

There are many persons in the United States who are of opinion that if we wait until the arbitration is completed a very serious, if not a fatal, blow may have been struck against that industry. There is no doubt that the catch of seals has increased largely of recent years, and some experts declare that grounds which were formerly covered with them are now almost denuded. I do not at all concede that that opinion is universal. The Government of Canada doubts very much whether the statistics on this point are correct. At all events, these apprehensions have this circumstance in their favor, that unrestricted permission to all nations to hunt the seal at all times has resulted in other parts of the world in its entire extermination. Formerly seals were common on the coasts of South America and those of the Falkland Islands; now they are hardly to be found there. There is, therefore, a serious danger to be averted, and we can hardly wonder that the United States should be anxious that an industry which is so very valuable should not incur any danger from neglect. They propose that over that part of the sea which they are authorized to deal with, and on all the islands and coasts belonging to the United States, there shall be no seal killed until the month of May, 1892, if Her Majesty's Government will arrest the progress of British seal hunting in the same waters during the same time.

It seems to us that on the whole the proposition is a reasonable one, and we should be fully incurring the censure, not only of the United States, but of the civilized world, if by adhering too closely to any technical right we should run the risk of the destruction of this valuable industry and of a valuable animal. Of course we are aware that some injury may be done by these arrangements to private interests, the claims of which it will be necessary to meet. The notice has come late in the year, and the seal hunters have made preparations which can not now be stopped. Ships have been fitted out for sealing in these particular waters which may not be able to find employment elsewhere. On the other hand, there is no doubt that seals that are caught more to the west will very much rise in price, and a certain compensation will to that extent be afforded. It is impossible to say beforehand whether there will be any practical loss or not. The consent of the Dominion Government to the bill we propose mainly turns on one or two points. First, we are agreed with respect to arbitration, if the United States agree with us, which I believe they fully intend to do. Secondly, they are agreed that compensation should be given whenever there has been a real loss in consequence of the action of the British Government. Who is to pay that compensation is a vexed question. We do not deny that a part may properly fall on the British Government, but we are inclined to dispute that the whole should do so.

I do not know what is the view taken by the Dominion Government; but time presses, and it would be impossible to defer action until, by the exchange of telegrams this difficult question should have been solved. Therefore, as in the first instance, as stated in the House of Commons, we have assumed the liability. I do not know that in any case it can be heavy. The provisions of the bill are few, and I do not think they lend themselves much to criticism. There is only one change we desire to be allowed to make in the bill; it is not a large matter, and it is in the nature of restricting rather than extending its action. I wish to alter the first clause, which prohibits the catching of seals by British ships "in Behring Sea," by adding "or any such part thereof as may be named in the said order." I do not know how far the Dominion will be inclined to go, but this is not a question of principle and there is no other alteration. It will be convenient if your lordships, after reading the bill a second time, will pass it through its remaining stages; but if there is a strong objection to that course, I will not press it. Time is running out, and every day or two is of importance. With these observations, I move the second reading of the bill.

The Earl of Kimberley. * * * With regard to the bill itself, I have no criticism to offer, and I would rather confine myself to an expression of satisfaction at the prospect of this controversy being terminated. I have had the opportunity, as your lordships have had, of reading the dispatches of the noble marquis, and I have seen with great pleasure the firmness with which he has maintained the rights of this country to use an open sea. At the same time in matters of this kind, which influence the relations between this country and the United States, it is clear that it is an advantage to both that disputes arising between the two countries should be settled by arbitration and by peaceful means, and therefore I welcome the announcement of the noble marquis that the terms of arbitration are practically settled, so that we may look forward to a speedy termination of the dispute. I now only ask the noble marquis for information upon the point whether an understanding with Russia has been arrived at. I am sorry to hear that no agreement has been come to with the Govern-

ment of the Dominion with regard to the question of compensation. Certainly it appears that the Dominion has so large and so direct an interest in the question that, at all events, a portion of the compensation should be borne by the Government of Canada. No one desires to impede the progress of the bill, and I think that the House will assent to the suspension of the standing orders. [Hear, hear.]

* * * * * * *

On the question that the bill do pass,

The Marquis of Salisbury moved an amendment to the effect that "Her Majesty, the Queen, might, by order in council, prohibit the catching of seals by British ships in Behring Sea during the period limited by the order or such part thereof as was described in the said order."

The amendment was agreed to, and the bill was passed.

Mr. Lincoln to Mr. Blaine.

No. 592.] LEGATION OF THE UNITED STATES,
London, January 6, 1892. (Received January 15.)

SIR: I have the honor to inclose herewith an extract from the Times newspaper of to-day containing the report of a speech made by Sir George Baden-Powell, M. P., to his constituents, relative to the Behring Sea question.

I have, etc.,

ROBERT T. LINCOLN.

[From the London Times, January 6, 1892.]

SIR G. BADEN-POWELL AND THE BERING SEA QUESTION.

Speaking last night at a meeting of his constituents in the Kirkdale Division of Liverpool, Sir George Baden-Powell gave an account of his mission to the Bering Sea. He said that Lord Salisbury told him it was a very difficult, complex, and delicate question; that, above all things, he wanted to avoid war with the United States, but that at the same time he wanted to be strong, to show no fear in his policy, but to show that he was not going to yield one jot or tittle of British rights. [Loud cheers.] But Lord Salisbury had an additional purpose in sending him there.

Three or four years ago the Americans seized some British vessels, imprisoned the captains and crews, and fined them for taking fur seals out of the high seas. This country, of course, promptly denied that these vessels were acting illegally, and last summer and autumn, by their work in the Bering Sea, he thought they had finally brought that awkward dispute, which might have resulted in war, to arbitration, and it was his conviction that this country would win in that arbitration. [Cheers.] He spent three months in the Bering Sea investigating the full facts. When he arrived there he found three British men-of-war and seven American Government ships, the latter with instructions to seize the British sealers if they attempted to seal; but the British commissioners were able, without any breach of the peace, to make satisfactory arrangements which enabled the British sailors there to take home what seals they had got. [Cheers.] He had some difficulty in getting at the full facts of seal life on the American islands, but he managed to become good friends with the Americans, and parted with them affectionately, after finding out all the facts.

He discovered that no one knew where the seals went to after leaving those American islands, and he accordingly arranged that the three men-of-war placed at his service and the transport steamer which carried himself should explore all these seas. He thought they acquired, as the result of that exploration, all the facts as to the migration of the seals—facts never before known. To do this they had to go through a great deal of rough work; the weather was cold, and there was usually fog, except when there was a gale; but somehow or other he found his body thoroughly suited to these elements, perhaps more so than to the House of Commons. [Laughter.] Lord Salisbury had been good enough to say more than once that what was done in the Bering Sea greatly exceeded his expectations and those of Her Majesty's Government. [Cheers.]

The investigations they had made were important, but the friendliness they had established with the Americans and the Russians had yet to bear fruit, and Lord Salisbury was now very anxious that he should go back at once to Washington, there to consort with officials of the American Government and to come to a joint agreement with them in view of the approaching arbitration. He was to leave on Saturday next, but he hoped to be back after two or three weeks' work in Washington, and to be able to report that the negotiations were as successful as the investigations. He was happy to say that both sides had not only agreed to leave the question to arbitration, but had agreed on the details of the arbitration, and he was convinced that all right-thinking public men, both in America and in this country, were delighted to find that this serious bone of contention was to be put out of sight in such a happy and peaceful manner.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

FURTHER CORRESPONDENCE BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF HER BRITANNIC MAJESTY, CONCERNING THE JURISDICTIONAL RIGHTS OF THE UNITED STATES IN THE WATERS OF THE BERING SEA, ETC.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1892.

MESSAGE

FROM THE

1892. (Benjamin Harrison.)

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

FURTHER CORRESPONDENCE BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF HER BRITANNIC MAJESTY, CONCERNING THE JURISDICTIONAL RIGHTS OF THE UNITED STATES IN THE WATERS OF THE BERING SEA, ETC.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1892.

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MESSAGE

Hon. Geo. F. Hoar

FROM THE

PRESIDENT OF THE UNITED STATES

TRANSMITTING

Two notes from Sir Julian Pauncefote under date of March 26 instant.

1892—MARCH 28.—Read; correspondence read, ordered to be printed, and lie on the table. Injunction of secrecy removed.

To the Senate:

I transmit herewith copies of two notes received from Sir Julian Pauncefote under date of March 26 instant. * * *

BENJ. HARRISON.

EXECUTIVE MANSION, *March 28, 1892.*

WASHINGTON, *March 26, 1892.*

SIR: I have the honor to inform you that I have received the reply of Her Majesty's Government to the note which you addressed to me on the 22d instant, by direction of the President, on the subject of the renewal of the *modus vivendi* in Bering Sea during the approaching fur-seal fishing season.

The Marquis of Salisbury states that notice has been given to the owners of ships sailing for Bering Sea that both the agreements which are at present under discussion between Great Britain and the United States, that as to arbitration and that as to an immediate agreement, may affect the liberty of sealing in Bering Sea. They have, therefore, notice of their liability of possible interruption, and will sail subject to that notice. The question of time is not, consequently, urgent.

I am to request you to inform the President that Her Majesty's Government concur in thinking that when the treaty shall have been ratified there will arise a new state of things. Until it is ratified their conduct is governed by the language contained in the note which I had the honor to address to Mr. Blaine on June 14, 1890. But, when ratified, both parties must admit that contingent rights have become vested in the other, which both desire to protect.

Her Majesty's Government think that the prohibition of sealing, if it stands alone, will be unjust to British sealers, if the decision of the arbitrators should be adverse to the United States. They are, however, willing, when the treaty has been ratified, to agree to an arrangement similar to that of last year, if the United States Government will consent that the arbitrators should, in the event of a decision adverse to the

United States, assess the damages which the prohibition of sealing shall have inflicted on British sealers during the pendency of the arbitration; and, in the event of a decision adverse to Great Britain, that they should assess the damages which the limitation of a slaughter shall, during the pendency of the arbitration, have inflicted on the United States or its lessees.

As an alternate course, Her Majesty's Government are also willing, after the ratification of the treaty, to prohibit sealing in the disputed waters, if vessels be excepted from the prohibition which produce a certificate that they have given security for such damages as the arbitrators may assess in case of a decision adverse to Great Britain; the arbitrators to receive the necessary authority in that behalf. In this case the restriction of the slaughter on the islands will not in point of equity be necessary.

Her Majesty's Government are unable to see any other than one of these two methods of restricting seal hunting in the disputed waters during the arbitration which will be equitable to both parties.

I have the honor to be, with the highest consideration, your most obedient humble servant,

JULIAN PAUNCEFOTE.

The Hon. WILLIAM F. WHARTON, etc.

BRITISH LEGATION,
Washington, March 26, 1892.

SIR: With reference to my previous note of this date and to the discussions which have taken place regarding the claims of our respective Governments to compensation in relation to the fur-seal fishery in Bering Sea, I have been instructed by the Marquis of Salisbury to state that he is not prepared to admit, as he gathers that the President thinks, that Her Majesty's Government have objected to the arbitrators having jurisdiction as to damages inflicted in the past by the party against whom the award is given. He only objected to make Her Majesty's Government liable for acts which they have not committed. His lordship is ready to consent to a reference on this point in the following terms:

"That in case the arbitrators shall decide in favor of the British "Government, that Government may ask them further to decide "whether the United States Government have since 1885 taken any "action in Bering Sea directly inflicting a wrongful loss on British sub-"jects; and if so, to assess the damage incurred thereby.

"That in case the arbitrators shall decide in favor of the United "States Government, that Government may ask them to decide further "whether the British Government have since 1885 taken any action in "Bering Sea directly inflicting a wrongful loss on the United States or "its lessees; and if so to assess to damage incurred thereby."

I have the honor to be with the highest consideration, sir,

Your most obedient humble servant,

JULIAN PAUNCEFOTE.

To the Hon. WILLIAM F. WHARTON, etc.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

Further correspondence between the Government of the United States and the Government of Her Britannic Majesty, concerning the jurisdictional rights of the United States in the waters of the Bering Sea, etc.

To the Senate:

I herewith transmit, in connection with Senate Executive Document No. 55, Fifty-second Congress, first session, copies of further correspondence between this Government and the Government of Her Britannic Majesty concerning the jurisdictional rights of the United States in the waters of the Bering Sea, and concerning also the preservation of the fur seal in, and habitually resorting to, the said sea, and the rights of the citizens and subjects of either country as regards the taking of the fur seal in, or habitually resorting to, the said waters.

BENJ. HARRISON.

EXECUTIVE MANSION,
Washington, March 23, 1892.

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*Sir Julian Pauncefote to Mr. Blaine.**

BRITISH LEGATION,
Washington, 13 February, 1892.

DEAR Mr. BLAINE: In reply to your letter of yesterday, I beg to state that in my opinion, the British commissioners are right in holding that they have no power under their present mandate to discuss the question of a *modus vivendi* for the next fishery season. Their authority is limited by the terms of the joint commission agreement which we signed on the 18th of December last.

That authority is confined to reporting their views on what fishery

*This note should have accompanied the message of the President to the Senate of March 9, 1892, but having been mislaid it failed to be communicated to that body. It is a reply to Mr. Blaine's note of February 12, 1892, which appears on p. 86 of Senate Ex. Doc. No. 55, Fifty-second Congress, first session.

regulations of a permanent character may be necessary with a view to arbitration. The question of a *modus vivendi*, pending the result of the arbitration, is one for the two governments to discuss. I have certainly urged, as an additional reason for the early meeting of the joint commission, that its reports would furnish valuable materials for such discussion; but it can hardly be contended that the commissioners can properly deal with such a question without special authority from their respective governments.

I communicated to Lord Salisbury the proposal you made to me at our interview of the 2d instant that our two governments should agree to a *modus vivendi*, and I am awaiting his lordship's reply.

I remain, etc.,

JULIAN PAUNCEFOTE.

Sir Julian Pauncefote to Mr. Wharton.

BRITISH LEGATION,
Washington, March 19, 1892.

SIR: On receipt of your note of the 8th instant I immediately telegraphed to the Marquis of Salisbury the substance of its contents in accordance with the request which you expressed on behalf of the President, and I have now the honor to inform you that I have this day received a reply from his lordship, by telegram, to the following effect:

Lord Salisbury again points out that the information in the possession of Her Majesty's Government does not lead them to believe that another year's suspension of sealing is necessary to prevent an undue diminution of the seal herds.

His lordship, however, proceeds to observe that beyond this question it is considered by your Government that they have a right to be protected from the loss which they may incur from free sealing being permitted this year, in the event of their claim to Bering Sea being upheld by the arbitrators. He states that Her Majesty's Government do not dispute that after the ratification of the convention there will be some foundation for this contention; but he adds that the prohibition of all sealing as a remedy has this defect, that the British sealers excluded from Bering Sea would have an undoubted ground of complaint if the British claim should be upheld by the arbitrators. Moreover, there is no security that the arbitration will be concluded before the sealing season of 1893. Thus an arbitration between Great Britain, the United States, and Portugal, which has already occupied four years, is still pending. Serious damage would be caused to the industry by a suspension of sealing for a long period.

In view of all the above considerations it appears to Her Majesty's Government that it would be more equitable to provide that sealing in Bering Sea shall continue on the condition that the owner of every sealing vessel shall give security for satisfying any damages which the arbitrators may adjudge.

I shall be glad to learn that the above suggestions meet with the concurrence of your Government.

I have the honor, etc.,

JULIAN PAUNCEFOTE.

Mr. Wharton to Sir Julian Pauncefote.

DEPARTMENT OF STATE,
Washington, March 22, 1892.

SIR: I am directed by the President to say that your note dated the 19th instant and delivered on the 20th instant (Sunday) has had his immediate attention in view of what he deems to be the extreme urgency and gravity of the matter under discussion. The urgency grows out of the fact that much further protraction of this discussion will make any modus that may be agreed upon ineffectual to protect the interests of the United States and will give to the Canadian sealers practical immunity, by reason of the impossibility of communicating to them the agreed restrictions. It is known to this Government that the sealers have hastened their departure to escape notice of a possible modus and that every day almost adds to the fleet that must now be overhauled at sea. Already forty-seven Canadian vessels have cleared for the sealing grounds (as against thirty-one at the same date last year), and are engaged in following up and destroying the seal herds. These vessels will, if not stopped and turned back at the passes, go into the Bering Sea and pursue to the very shores of our islands the slaughter of the mother seals seeking the accustomed rookeries to be delivered of their young. This is a crime against nature. This Government expects to show, if the arbitration proceeds, that female seals constitute the larger per cent of the catch of the pelagic sealers.

That in view of this serious and confident contention of this Government his lordship should assume that another year's suspension of *such* sealing is not necessary "to prevent an undue diminution of the seal herds" and should insist that pending an arbitration it shall go on, precisely as if no arbitration had been agreed upon, is as surprising as it is disappointing. If Her Majesty's Government so little respects the claims and contentions of this Government as to be unwilling to forbear for a single season to disregard them, the President can not understand why Lord Salisbury should have proposed and agreed to give to those claims the dignity and standing which a reference to a high court of arbitration implies. From the moment an arbitration was agreed upon neither party was at liberty to disregard the contentions of the other.

It must be assumed that the sincere purpose of the two governments was to promote peace and good will, but if, pending the arbitration, either deals with the subject of it solely upon the basis of its own contention and in utter disregard of the claims of the other, this friendly end is not only not attained but a new sense of injury and injustice is added, even if it should be found possible to proceed with an arbitration under such conditions. For it must not be forgotten that if Her Majesty's Government proceeds during this sealing season upon the basis of its contention as to the rights of the Canadian sealers, no choice is left to this Government but to proceed upon the basis of its confident contention that pelagic sealing in the Bering Sea is an infraction of its jurisdiction and property rights. His lordship will hardly fail to see this. Herein, in the opinion of the President, consists the gravity of the present situation, and he is not willing to be found in any degree responsible for the results that may follow the insistence by either Government during this season upon the extreme rights claimed by it. In his opinion it would discredit in the eyes of the world the two great

governments involved if the paltry profits of a single season should be allowed to thwart or even to disturb the honorable and friendly adjustment of their differences, which is so nearly concluded; but if his lordship shall adhere to his refusal to unite with us in prompt and effective measures to stop pelagic sealing, and shall insist upon free sealing for British subjects, the question, as it affects this Government, is no longer one of pecuniary loss or gain, but one of honor and self-respect.

This Government, notwithstanding the fact that its right to take seals upon the Pribilof Islands is undisputed and wholly uninvolved in the arbitration, has proposed to take no profit from the island catch, but to limit the taking of seals to the necessities of the natives of those islands, and it can not consent that, with indemnity or without, the contested rights of British subjects to catch seals in the Bering Sea shall be exercised pending the arbitration. The President finds it difficult to believe that Lord Salisbury is serious in proposing that this Government shall take separate bonds from the owners of about one hundred Canadian sealing vessels to indemnify it for the injury they may severally inflict upon our jurisdiction or property, and must decline to discuss a suggestion which only his respect for Lord Salisbury and his belief that his lordship has a due appreciation of the gravity of this discussion enable him to treat with seriousness.

We should doubtless have to pursue and capture upon the sea many of the owners of those vessels to secure the bonds suggested, and as the condition is to be that the obligors shall pay "any damages which the arbitrators may adjudge," while the treaty gives the arbitrators no power to adjudge any damages, the transaction would be without risk to the obligors and of no value to us.

This Government can not consent to have what it believes to be its rights destroyed or impaired pending their determination by an agreed tribunal, however adequate the security offered. The reference in my last note to the inconsistency of Her Majesty's Government in denying responsibility for the acts of the Canadian sealers was not intended to suggest a willingness on our part under any circumstances to see our property converted into a claim for damages, and particularly as such a claim can not now be heard or determined by the arbitrators without a reformation of the treaty, for his lordship must remember that while he now offers what he mistakenly calls "security for satisfying any damages which the arbitrators may adjudge," he has already carried his point in the treaty that the arbitrators shall have no jurisdiction to award any damages.

As to his lordship's suggestion, that Canadian sealers may have some claim for compensation if Great Britain shall restrain pelagic sealing, the President directs me to say that he is not able to see how the citizens or subjects of either of the treaty powers can by any rule of law or equity support any claim against their respective governments growing out of such necessary trade restraints as the governments may lawfully impose to promote the larger considerations of the public good and international peace.

The suggestion that the conclusions of the board of arbitration may not be reached and announced in time to govern the conduct of the parties during the season of 1893 is, I think, fully provided against by the treaty itself.

His lordship is mistaken as to the time that has elapsed since the signing of the Delagoa Bay agreement with Portugal. It is not four years old, but less than one, the date of signing being June 13, 1891.

If the present treaty is promptly ratified and exchanged our mutual

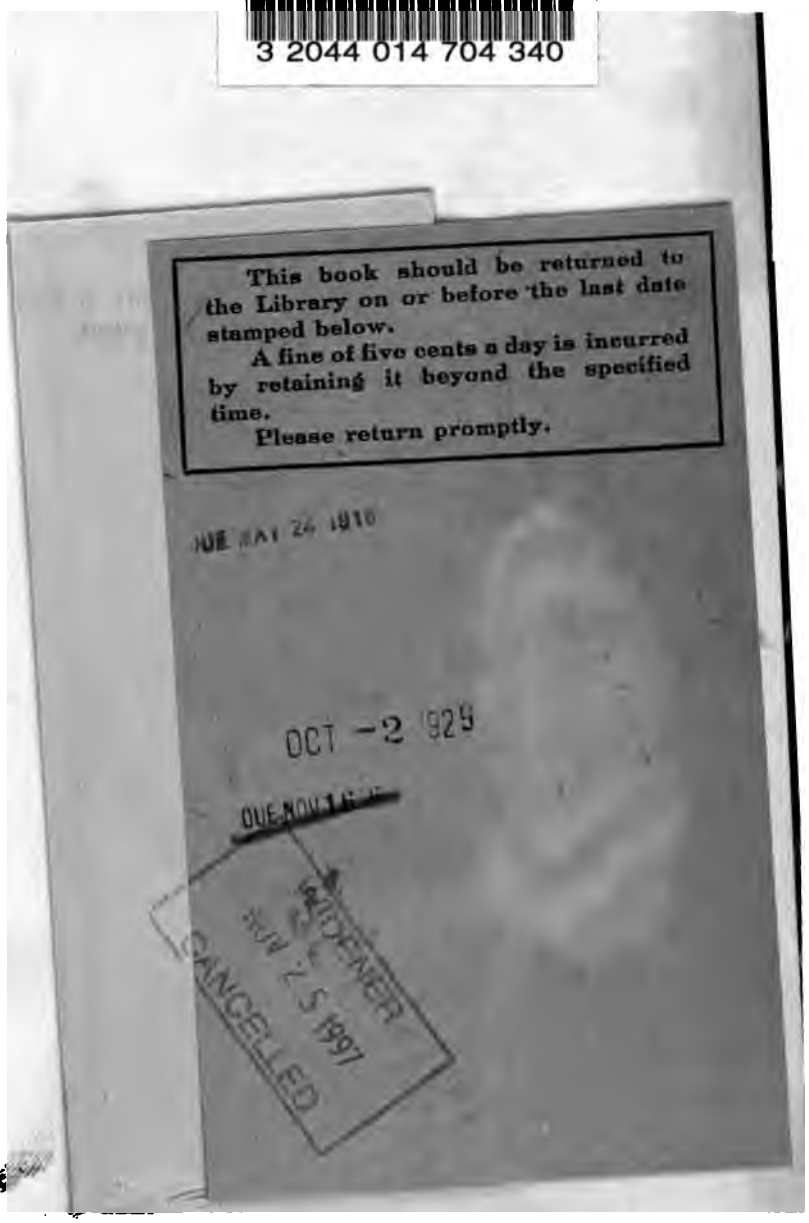
interest would be an ample guaranty against delay. The President has found no obstacle in the way of such a consummation, except the belief now unfortunately very prevalent here that the refusal of Great Britain to agree to the preservation of the *status quo* of the property during the arbitration, and her insistence that pelagic sealing shall go on, to the injury, if not destruction, of our rights, largely defeats the object of the treaty.

The President directs me to say, in conclusion, that the modus of last year is the least that this Government can accept. In reason, the restraints, after a treaty of arbitration, should be more absolute, not less. He does not desire to protract this discussion, and having now in the most friendly spirit submitted the considerations which support the just demand of this Government that the property which is the subject of an agreed arbitration shall not be subject to spoliation pending the arbitration, he expresses the hope that Lord Salisbury will give a prompt and friendly assent to renew the modus.

The President will hear with regret that Her Majesty's Government continues to assert a right to deal with this subject precisely as if no provision had been made for a settlement of the dispute; and, in that event, this Government, as has already been pointed out, will be compelled to deal with the subject upon the same basis, and to use every means in its power to protect from destruction or serious injury property and jurisdictional rights which it has long claimed and enjoyed.

I have the honor to be, with the highest consideration, sir, your obedient servant,

WILLIAM F. WHARTON,
Acting Secretary.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